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7  
8 **IN THE UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

10 SHARON COBB, DENNIS  
11 DEMERECKIS, BEVERLY GIBSON,  
12 TRISH ISABELLA, and NANCY  
13 WENTWORTH, individually and on  
behalf of all others similarly situated,

14 PLAINTIFFS,

15 vs.

16 BSH HOME APPLIANCES  
CORPORATION, a Delaware  
17 Corporation,

18 DEFENDANT.

Case No. SACV10-711 DOC (ANx)  
(Consolidated with Case No.  
SACV10-01562 CJC (FFMx) )

***REDACTED***  
**THIRD CONSOLIDATED  
AMENDED COMPLAINT**

**FILED UNDER SEAL**

**PURSUANT TO PROTECTIVE  
ORDER DATED 3/28/11**

[Jury Trial Demanded]

19  
20  
21 Plaintiffs Beverly Gibson ("Ms. Gibson"), Trish Isabella ("Ms. Isabella"),  
22 Dennis Demereckis ("Mr. Demereckis"), and Nancy Wentworth ("Ms. Wentworth")  
23 (jointly referred to as "Consumer Representatives") by and through their  
24 undersigned counsel, individually and on behalf of all others similarly situated (the  
25 "Class" (The Class and Consumer Representatives jointly are referred to as  
26 "Plaintiffs")), allege the following facts and claims upon personal knowledge and  
27 upon information and belief as to all other matters as follows.

## **INTRODUCTION**

1  
2 1. The Consumer Representatives bring this class action on behalf of  
3 themselves, and all others similarly situated, against Defendant BSH Home  
4 Appliances Corporation (“Defendant,” “Bosch” or “Siemens”) seeking damages,  
5 restitution, a constructive trust, and injunctive relief for the proposed Class as  
6 defined herein.

7 2. This action is brought to remedy violations of law in connection with  
8 Defendant’s design, sale, and warranting of only its 27” and 24” Horizontal  
9 Axis/Front-Loading Automatic Clothes Washers, including, but not limited to,  
10 Bosch Axxis, Nexxt, and Vision Models, and Siemens ultraSense and ultraStack  
11 models (hereinafter collectively referred to as “Washing Machine(s)” or  
12 “Machine(s)”). Bosch marketed its 27” Machines under the Nexxt, Vision, and  
13 Siemens ultraSense model lines and its 24” Machines under the Axxis and Siemens  
14 ultraStack model lines. The specific Bosch and Siemens brand Washing Machines,  
15 in contrast to all of the other Bosch and Siemens brand Washing Machines, parts,  
16 pieces, operation, and materials are the same.

17 3. The North American washing machine market today is comprised of  
18 both vertical (top-loading) and horizontal axis (front-loading) washing machines.  
19 The Washing Machines do not effectively self clean. Instead the Machines’  
20 defective parts, including, its sump area, backside of the Outer Tub, detergent  
21 dispenser, gaskets, and baffles attached to the interior of the Clothes Basket retain  
22 dirty water and moisture which cause Biofilm (defined below) to be deposited in  
23 areas of the machine which wash water comes in contact with and which fosters and  
24 causes bioorganic material to develop inside of them and emit Foul Odors (defined  
25 below).

26 4. The Foul Odors are proof of the actual problem: the Washing Machines’  
27 defective parts retain dirty wash water that foments the development of Biofilm,  
28 which begets mold and bacteria and Mold Problem (defined below), which produce

1 Foul Odors. The dirty wash water carries and has within it, remnants and particles  
2 of detergent, fabric softeners, dirt, scum, skin, hair, oil, bugs, food, beverages and  
3 other organic material. The defects in the parts of the Machines have defects that  
4 were unintended by Bosch. Bosch has proclaimed that its design intention is to  
5 design parts and assembled Machines that evacuate and eliminate, during the  
6 Machine's operation, dirty wash water and the particles and remnants described  
7 above. However because of unintended defects in the parts used to assemble the  
8 Machines, and defects in assembled and completed Machines, they produce  
9 Biofilm, the Mold Problem (defined below) and the Foul Odors. "Biofilm," an  
10 amalgamation of remnants and particles of detergents, fabric softeners, dirt, scum,  
11 skin, hair, oils, bugs, food, beverages, and other organic material, develops within  
12 the Washing Machines in places where consumers cannot remove it. Bacteria,  
13 mold, fungus, and other bioorganic matter begin to feed and grow on and become  
14 incorporated into the Biofilm ("Mold Problem"). Within a short time after the  
15 Machines are put to use, the Mold Problem produces odors that offend the olfactory  
16 senses of Plaintiffs ("Foul Odors").

17 5. The Washing Machines' have defective parts that cause, even when the  
18 Machines are used as Bosch recommends, the accumulation of Biofilm, and  
19 development of Foul Odors and the Mold Problem. These defective parts presently  
20 known by Plaintiffs, which they reserve the right to amend to add other parts that  
21 they may learn are also defective and contribute to the development of Biofilm, The  
22 Mold Problem or Foul Odors are the back wall of the Outer Tub, the Baffles or  
23 Paddles, the Clothes Basket Support Bracket, the detergent dispenser, the detergent  
24 dispense boot, the door bellow, and the Sump/Heating Element area of the Outer  
25 Tub (the "Defective Parts") The Defective Parts cause dirty wash water retained in  
26 the Machines, after the wash cycle is completed to develop Biofilm, the Mold  
27 Problem and Foul Odors.

1           6. As a result of the presence of the Defective Parts in the Machines and the  
2 effects they cause, e.g. Biofilm, the Mold Problem and Foul Odors, the Washing  
3 Machines do not satisfy the purpose for which they were purchased; *i.e.*, to clean  
4 clothes, towels, bedding, and other washable items (hereinafter collectively referred  
5 to as “Clothes”) and make Clothes smell fresh and clean.

6           7. As a result of the presence of the Defective Parts in the Machines and the  
7 effects they cause, e.g. Biofilm, the Mold Problem and Foul Odors, the Washing  
8 Machines cause all Machine Owners’ Clothes to not be clean, smell foul, stink, and  
9 carry and emit offensive and obnoxious odors.

10           8. The Consumer Representatives assert claims on behalf of themselves and  
11 a Nationwide Class for violations of the “Unfair,” Unlawful” and “Fraudulent”  
12 prongs of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et*  
13 *seq.* (“UCL”), Cal. Bus. & Prof. Code § 17500 *et seq.* (“FAL”), and Cal. Civ. Code  
14 § 1750 *et seq.* (“CLRA”) (“Nationwide Class”).

15           9. In addition, and in the alternative to the Nationwide Class, Plaintiff  
16 Gibson asserts claims on behalf of a Maryland Subclass (defined below) for  
17 violation of the Maryland Consumer Protection Act, Maryland Code, Commercial  
18 Law § 13-101, *et seq.*, and breach of express warranty under Maryland Commercial  
19 Law § 2-313.

20           10. In addition, and in the alternative to the Nationwide Class, Plaintiff  
21 Isabella asserts claims on behalf of a New York Subclass (defined below) for  
22 violation of New York General Business Law §§ 349 and 350, and breach of  
23 implied warranties under the MMWA, and N.Y. UCC § 2-314, and New York  
24 common law.

25           11. In addition, and in the alternative to the Nationwide Class, Plaintiff  
26 Wentworth asserts claims on behalf of a California Subclass (defined below) for  
27 breach of express written and implied warranties under the MMWA, California  
28

1 Commercial Code §§ 2313, the Song-Beverly Act, Cal. Civ. Code § 1790 *et seq.*  
2 (“Song-Beverly”), and California common law.

3 12. In addition to, and in the alternative to the Nationwide Class, Plaintiff  
4 Demereckis asserts claims on behalf of an Illinois Subclass (defined below) for  
5 violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815  
6 ILCS 505/1, *et seq.* The Nationwide Class, Maryland Subclass, New York Subclass,  
7 California Subclass and Illinois Subclass are cumulatively hereinafter referred to as  
8 the “Class”.

9  
10 **THE PARTIES**

11 **Plaintiffs**

12 13. Plaintiff Beverly Gibson is a citizen of Maryland. On or about January  
13 7, 2009, Plaintiff Gibson purchased a Bosch Nexxt 800 Washing Machine from US-  
14 Appliance.com, an online appliance retailer located in Michigan.

15 14. Within several months of owning and operating the Washing Machine  
16 under normal household conditions, and as recommended by Bosch, the Washing  
17 Machine accumulated Biofilm, and developed Foul Odors and the Mold Problem.  
18 Ms. Gibson notified Bosch that her Washing Machine had defective parts and the  
19 Mold Problem within one year of her date of purchase of the washer.

20 15. Plaintiff Gibson purchased a Bosch Washing Machine and used it for  
21 its intended purpose, to clean Clothes, and as recommended and instructed by  
22 Bosch. Ms. Gibson experienced, during Bosch’s express warranty period, and  
23 continues to experience the accumulation of Biofilm, Foul Odors, and the Mold  
24 Problem in her Washing Machine and on Clothes washed in her Washing Machine.  
25 Ms. Gibson provided Bosch with pre-suit notice of her belief that her Washing  
26 Machine had defects that caused Biofilm and the Mold Problem in her Machine to  
27 manifest and followed actions Bosch recommended to avoid and eliminate Biofilm,  
28 Foul Odors, and the Mold Problem. Bosch sent instructions to Ms. Gibson

1 regarding products to purchase, which it claimed would rid her Machine of Biofilm,  
2 Foul Odors and Mold Problems. Ms. Gibson followed Bosch directions of what to  
3 do to her Machine to rid it of Biofilm, Foul Odors and Mold Problems; however,  
4 Ms. Gibson's Washing Machine continues to have Biofilm, Foul Odors and the  
5 Mold Problem.

6 16. Plaintiff Trish Isabella is a citizen of New York and resides in  
7 Johnstown, New York. On or about September 19, 2007, Trish Isabella purchased a  
8 Bosch Nexxt 500 Series Washing Machine from a Showcase Furniture retail store in  
9 Johnstown, New York. Within several months of owning and operating the  
10 Machine under normal household conditions, and as recommended by Bosch, Ms.  
11 Isabella noticed the Mold Problem. Ms. Isabella tried to remediate the Biofilm,  
12 Mold Problem, and Foul Odors on numerous occasions, but her Washing Machine  
13 continues to have Biofilm, the Mold Problem and Foul Odors.

14 17. Plaintiff Nancy Wentworth is a citizen of California and resides in San  
15 Diego, California. On or about February 20, 2008, Plaintiff Wentworth purchased a  
16 Bosch Nexxt DLX Washing Machine from a Pacific Sales retail store located in San  
17 Diego, California. Within several months of owning and operating the Washing  
18 Machine under normal household conditions, and as recommended by Bosch, the  
19 Washing Machine accumulated Biofilm, and developed Foul Odors and the Mold  
20 Problem. Ms. Wentworth notified Bosch of the Mold Problem within two years of  
21 her date of purchase of her Washing Machine.

22 18. Plaintiff Wentworth purchased a Bosch Machine and used it for its  
23 intended purpose and as recommended and instructed by Bosch. Plaintiff  
24 Wentworth experienced and continues to experience the accumulation of Biofilm,  
25 Foul Odors, and the Mold Problem in her Washing Machine and on Clothes washed  
26 in her Washing Machine. Plaintiff provided Bosch with pre-suit notice that she  
27 believed her Washing Machine had defective parts and of the Biofilm, Foul Odors  
28 and Mold Problem in her Machine and followed actions Bosch recommended to



1 avoid and eliminate Biofilm, Foul Odors, and the Mold Problem. Bosch replaced  
2 the door gasket in Wentworth's Washing Machine on January 19, 2010; however  
3 Ms. Wentworth's replacement door gasket quickly developed new Biofilm, Foul  
4 Odors and the Mold Problem. In addition Plaintiffs are informed, believe and  
5 contend that Ms. Wentworth's Machine had Biofilm and Mold on the back wall of  
6 the Outer Tub when she notified Bosch of the defects and their effects. Which  
7 defect part was not replaced by Bosch in response to Ms. Wentworth's notice.

8 19. Indeed, on June 17, 2010, Bosch, through its employee and counsel,  
9 visually inspected and operated Ms. Wentworth's machine. This event happened  
10 within six months of Bosch's replacement of the Machine's door gasket. By June  
11 17, 2010, Ms. Wentworth's 6-month old gasket was inundated with the Mold  
12 Problem. A subsequent inspection and disassembly of Ms. Wentworth's washer in  
13 the presence of Bosch's counsel, followed by laboratory analysis of swab samples  
14 taken from the inside parts of Ms. Wentworth's Machine confirmed the presence of  
15 mold, Biofilm, and bacteria inside Ms. Wentworth's washer.

16 20. Plaintiff Dennis Demereckis is a citizen of Illinois and resides in  
17 Mokena, Illinois. On or about May 22, 2009, Plaintiff Demereckis purchased a  
18 Bosch Nexxt Washing Machine from Grant's Appliances Electronics and More  
19 ("Grant's") located in Orland Park, Illinois. Within six months of owning and  
20 operating the Machine for normal household purposes and use, and as  
21 recommended by Bosch, the Machine accumulated Biofilm and developed Foul  
22 Odors and the Mold Problem. Plaintiff Demereckis spoke to a Bosch service  
23 representative within 3 months of purchasing his Bosch Nexxt Washer regarding  
24 Foul Odors and the Mold Problems in his Machine and Bosch's service  
25 representative advised him to run empty bleach cycles with hot water every 3  
26 months and to use powder detergents for the purpose of trying to reduce the Foul  
27 Odors and Mold Problem Demereckis had experienced in his Washing Machine.

1 21. Demereckis has followed Bosch's supplemental directions and original  
2 maintenance instructions, keeping the Washer's door open between groups of wash  
3 cycles, removing the detergent drawer and placing it under running water or placing  
4 it in a bleach/water solution, and using powder HE detergent. Despite these efforts,  
5 Demereckis' Washer has transferred foul odors to clothing and other items run  
6 through it, and required constant application of extraordinary care and attention.

7 22. *[Intentionally Omitted]*  
8

9 **Defendant**

10 23. BSH Home Appliances Corporation is a Delaware corporation and  
11 maintains its principal place of business at 5551 McFadden Avenue, Huntington  
12 Beach, California 92649, where its Washing Machine design team, executive  
13 offices, and sales, marketing, finance, logistics, information technology, human  
14 resources and customer support departments are located. When members of the  
15 proposed Nationwide Class call the warranty service telephone number  
16 disseminated by Defendant, they speak with BSH Home Appliances Corporation  
17 employees located in Huntington Beach, California, who as a pattern and practice  
18 deny Class members' warranty claims.

19 24. BSH Home Appliances Corporation is a wholly-owned subsidiary of  
20 BSH Bosch and Siemens Home Appliances Group based in Munich, Germany.  
21 Bosch is the third largest manufacturer of "high-end" appliances and sells its  
22 products in the United States under the Bosch, Siemens, Thermador and Gaggenau  
23 brands. Bosch & Siemens Washing Machines are manufactured in New Bern,  
24 North Carolina.

25 25. BSH has announced that it intends to stop production of its 27"  
26 Machines at its New Bern, NC facility by the end of 2011.  
27  
28



**JURISDICTION AND VENUE**

26. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2) because the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and this is a class action in which the members of the proposed Class and Defendant are citizens of different states.

27. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendant does substantial business in this district and is a resident of this judicial district, and a substantial part of the events or omissions giving rise to Plaintiffs' claims took place within this district. See attached as Exhibit 1, the declarations from Consumer Representatives Wentworth, Demereckis, Gibson, Cobb, and Isabella regarding proper venue for this action.

**FACTUAL BACKGROUND**

28. Defendant is in the business of manufacturing, producing, distributing, and/or selling Washing Machines throughout the United States under the brand names Bosch and Siemens. The Washing Machines sold under both brands are substantially identical, and the Consumer Representatives are informed and believe both brands of the Washing Machines are and were manufactured in the same facilities.

29. Bosch manufactured, produced, and/or distributed Washing Machines for sale by its network of authorized dealers including several leading retailers in the United States, such as ABT, Best Buy, Lowe's, Pacific Sales, Sears, and other large retail chains. Bosch and Siemens model Washing Machines are sold at retail for between \$600 to over \$1500.

**NON-FRAUD ALLEGATIONS REGARDING DEFENDANT'S  
VIOLATION OF THE UNFAIR PRONG OF THE UCL**

30. The following allegations apply to Plaintiffs' claim that Defendant's conduct violated the unfair prong of the UCL. These allegations do not sound in

1 fraud, and the requirements for pleading fraud do not apply to Plaintiffs' claim  
2 under the unfair prong of the UCL. Plaintiffs expressly disclaim any allegations  
3 that could be construed as sounding in fraud as applied to this claim, and those  
4 allegations expressly are not incorporated by reference in this section of complaint.  
5 Furthermore, the conduct complained of that gives rise to Plaintiffs' unfair-prong  
6 claim is separate and apart from the course of conduct giving rise to Plaintiffs'  
7 claims under the fraudulent prong of the UCL, as well as the CLRA and FAL.

8 31. Defendant's unfair conduct in violation of the unfair prong of the  
9 UCL is Defendant's sale of Washing Machines that develop Mold Problems, even  
10 during the warranty period.

11 32. Plaintiffs reasonably expected the Washing Machines to operate  
12 without Mold Problems. This was a material consideration in Plaintiffs' purchasing  
13 decisions. Simply put, Plaintiffs would not have purchased Washing Machines that  
14 have Mold Problems and certainly would not have paid the amounts that they paid  
15 for Machines that have Mold Problems. Plaintiffs did not receive the product that  
16 they bargained for, namely a Washing Machine that does not develop Mold.  
17 Washing Machines with Mold Problems are not worth as much as Washing  
18 Machines without Mold Problems.

19 33. Plaintiffs also expected that the Washing Machines, which are front  
20 load washers, are more efficient than top loading machines, which is supposed to  
21 justify their significantly higher price. In fact, as further alleged herein, consumers  
22 must regularly run extra hot-water cleaning cycles on the Machines when they are  
23 empty in an attempt to remedy the Mold Problems, thereby negating any purported  
24 water and energy efficiencies that they expected from the purported superior design  
25 and efficiency of front-load washing machines.

26 34. The presence of mold and mildew in the Machines also poses a  
27 threat to Plaintiffs' safety and to the safety of others which results in further  
28 economic loss from the time that Plaintiffs purchased their Machines. (Plaintiffs'

1 standing is not predicated on a threat of future harm but on actual economic loss  
2 resulting from purchasing the Machines. Further, Plaintiffs herein are not asserting  
3 claims for personal injury, only economic injury resulting from overpaying for  
4 unsafe machines. Inhaling and touching mold can cause allergic reactions,  
5 including sneezing and skin rash. Allergic reactions to mold are common. Mold  
6 exposure can also irritate the eyes, skin, nose, throat and lungs. Severe sufferers  
7 may endure shortness of breath, tightening of the throat and even respiratory  
8 distress. Mold can also cause other problems such as severe memory impairment,  
9 irritable bowel syndrome and chronic fatigue. Plaintiffs paid for safe, Mold-free  
10 Washing Machines, but instead received unsafe, Mold-forming Washing Machines.  
11 The overpayment for the unsafe Machines constitutes further economic loss.

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18 36. Defendants' conduct satisfies the prerequisites for unfair conduct  
19 under the UCL in that Defendant's practice offends an established public policy  
20 and/or is immoral, unethical, oppressive, unscrupulous or substantially injurious to  
21 consumers. Further, consumers' injury are substantial; the injury is not outweighed  
22 by any countervailing benefits to consumers or competition; and consumers' injury  
23 is an injury that consumers themselves could not reasonably have avoided.  
24 Defendants' conduct also significantly threatens or harms competition.

25 37. The injury to consumers is substantial, particularly because the  
26 Machines are defective at the time of sale and developed Mold Problems even  
27 during the warranty period. Plaintiffs paid hundreds of dollars for Washing  
28 Machines that they would not otherwise have spent for washing machines that have

1 Mold Problems. Moreover, the presence of Mold Problems defeated the primary  
2 purpose of the Washing Machines, which is to remove stains, odors and bacteria.

3 38. The injury to consumers is not outweighed by any countervailing  
4 benefits to consumers or competition. Furthermore, any purported efficiency  
5 benefit of Bosch's front-load design is not realized by consumers as they paid a  
6 hundreds of dollars more for the Washers than top-loaders at the outset, and then  
7 were forced to pay to regularly run their Machines empty (as often as once per  
8 week) with the additional cost of specialized cleaning agents (as much as \$3-4 per  
9 cycle when using Affresh). Even if higher efficiency were achieved, consumers  
10 should not have to endure Mold Problems as a trade-off for purported energy and  
11 water efficiencies. Any purported benefits to consumers from the design of the  
12 Machines is negated by the propensity of the Machines to develop Mold Problems  
13 and the Extraordinary Actions required of consumers.

14 39. The injury to consumers is not an injury that consumers themselves  
15 could not reasonably have avoided because consumers did not know about the Mold  
16 Problems before they bought the Machines. Further, Defendants' recommended  
17 Extraordinary Actions are ineffective and result in additional operating expenses  
18 such as higher energy and water bills, as well as the cost of specialized cleaning  
19 agents. Moreover, the source and situs of the Mold Problems (as alleged herein) are  
20 in parts of the Machine that are not reasonably accessible to consumers.

21 40. Defendant's conduct also is immoral, unethical, oppressive and/or  
22 unscrupulous given the evidence above that confirms the existence of Mold  
23 Problems in the Washing Machines. In addition, it is unethical and oppressive to  
24 charge a premium price for a product that fails of its essential purpose of washing  
25 Clothes without the Machines developing Mold. Further, as alleged in detail below,  
26 Defendant actually knew about the existence of Mold Problems with the Machines,  
27 which renders Defendant's conduct particularly immoral, unethical, oppressive and  
28 unscrupulous.

1           41. Defendant's conduct also offends established public policies  
2 concerning consumer protection and class action litigation. The California Supreme  
3 Court has found that "[p]rotection of unwary consumers from being duped by  
4 unscrupulous sellers is an exigency of the utmost priority in contemporary society."  
5 *Vasquez v. Super. Ct.*, 4 Cal. 3d 800, 808 (1971). Moreover, the public policy at the  
6 very core of the class action mechanism is to overcome the problem that relatively  
7 small recoveries do not provide the incentive for any individual to bring a solo  
8 action prosecuting his or her rights. A class action solves this problem by  
9 aggregating the relatively small potential recoveries into something worth  
10 someone's time and labor. *Amchem Prods. v. Windsor*, 521 U.S. 591, 617 (1997)  
11 (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997).  
12 California also has established a public policy against allowing manufacturers to  
13 escape liability for placing defective consumer products in the stream of commerce  
14 by imposing liability on them, and subjecting them to penalties, under the implied  
15 warranty of merchantability by operation of law under the Song-Beverly Act, Cal.  
16 Civ. Code § 1790 *et seq.*

17           42. Defendant's conduct also significantly threatens or harms  
18 competition. But for Bosch's consumption of market share through the sale of  
19 defective Washing Machines, other manufacturers of non-defective washing  
20 machines could enter the market and increase consumer choice or otherwise benefit  
21 the consumer marketplace by occupying a meaningful share of the market and being  
22 able to allocate greater resources to research and development of better washing  
23 machines. Furthermore, the sale of inefficient and defective Washing Machines that  
24 grow mold diminishes the good will and reputation of the entire front-load washing  
25 machine market, and drives consumers away from a market segment that could  
26 otherwise provide water and energy savings for consumers, as well as  
27 municipalities. This is evidenced by the entry of high-efficiency top loaders into the  
28 market in recent years by manufacturers other than Bosch. Still more, by using

1 Defective Parts, Bosch is able to sell its Washing Machines at the lower end of the  
2 premium segment, thereby taking business away from manufactures of washing  
3 machines who have opted not build defective washing machines.

4  
5 **BOSCH'S OMISSIONS OF MATERIAL FACTS AT THE POINT OF SALE**  
6 **ON LABELS ON THE WASHING MACHINES IN RETAIL STORES**  
7 **WHERE THE MACHINES ARE SOLD**

8 44. Bosch fails to disclose to Plaintiffs, at the time of purchase, the  
9 material facts that: 1) the Washing Machines' have defective parts and have been  
10 assembled into a defective machine that has and have a high propensity to  
11 accumulate Biofilm and develop Foul Odors and the Mold Problem, 2) the need for  
12 Extraordinary Actions (defined below); and 3) the inevitable incurring of  
13 Undisclosed Additional Operating Expenses (defined below).

14 45. Consumer Representatives now plead their material omission claims  
15 with the requisite particularity to satisfy Rule 9(b) and incorporate all other  
16 paragraphs by reference hereto. Plaintiffs expressly disclaim any claims for  
17 affirmative misrepresentations and seek relief only for Bosch's omissions of  
18 material fact, some of which are based on partial disclosures as explained below.

19 **WHO:**

20 46. BSH Home Appliances Corporation is the entity that fails to disclose  
21 Material Fact (defined below) at the point of purchase to Plaintiffs.

22 **WHAT:**

23 47. Bosch fails to disclose Material Facts (defined below) at the time of  
24 purchase. Bosch fails to disclose that the Washing Machines each have the  
25 Defective Parts, as defined herein, and that even if consumers operate the Washing  
26 Machines as instructed by Bosch the Defective Parts will cause Biofilm, the Foul  
27 Odors and the Mold Problem to develop and be present in each Washing Machine  
28



1 due to the Defective Parts in the Washing Machines. Bosch fails to disclose, at any  
2 time prior to the consumers purchase of the machine, that it requires consumers to  
3 periodically run extra bleach or vinegar and hot water cleaning cycles, wipe-down  
4 the clothes basket and door bellows after each wash, and/or leave the door “ajar”  
5 between washes (collectively hereinafter referred to as the “Extraordinary Actions”)  
6 in order to combat the development and accumulation of Biofilm, Mold Problem  
7 and Foul Odors. The Extraordinary Actions require Washing Machine owners to  
8 pay for the additional energy, water, and bleach (or other cleaning agents such as  
9 Affresh or Tide Washing Machine Cleaner) needed to regularly run hot-water cycles  
10 in an attempt to redress the effects of the Defects in the Washing Machines (the  
11 additional cost for energy, water and bleach or other cleaning agents, to perform the  
12 Extraordinary Actions is hereafter referred to as the “Undisclosed Additional  
13 Operating Expenses”). Bosch labels the Washing Machines as “High Efficiency” on  
14 the Machines (See Figures 2, 6, 8, 9, 12 and 13) and “Energy Star”<sup>1</sup> compliant on  
15 stickers or placards it places on or in the Washing Machines, but does not disclose  
16 the fact that the Washing Machines require the Extraordinary Actions and  
17 Undisclosed Additional Operating Expenses that render the Washing Machines  
18 inefficient.

19 48. As to Bosch Sanitary Models (defined below) and Siemens ultraSense  
20 models, Bosch makes partial representations through the label “XXTRA  
21 SANITARY” (See Figures 1, 5, 12 and 14), and “Sanitary 170,” but fails to disclose  
22 that the Machines are defective and cannot sanitize Clothes or the Machines  
23 themselves. (The facts in paragraphs 47-48 of this Complaint are collectively  
24 hereinafter referred to as the “Material Facts”).

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25 <sup>1</sup> ENERGY STAR is a voluntary labeling program designed to identify and promote energy-efficient products through  
26 a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy. Bosch tests its own  
27 Washing Machines and submits its tests results to the U.S. Department of Energy who then applies a standard formula  
28 to calculate the energy rating. The tests performed by Bosch do not take into account the empty-hot water and bleach  
cycles that Bosch recommends Class members run to avoid or remedy the Mold Problem.

1 **WHEN:**

2 49. Plaintiffs relied on Bosch's omissions of Material Fact at the point of  
3 sale. **Consumer Representative Gibson:** At the time of deciding to purchase a  
4 Washing Machine from US-Appliance.com, on January 7, 2009 Ms. Gibson  
5 researched, observed and examined the Washer online. She logged on to US-  
6 Appliance.com and viewed the landing page for the Bosch Nexxt 800 model (see  
7 Ex. 3). Through the US-Appliance.com Bosch Nexxt 800 landing page she clicked  
8 on the hyperlink "Performance Details and Photos" (See Ex. 3). The "Performance  
9 Details and Photos" hyperlink directed her web browser to the Bosch Nexxt 800  
10 features website landing page at the URL [www.bosch-](http://www.bosch-home.com/us?product_id=848&Page_Header=Bosch%20%20Key%20Features&htype=2)  
11 [home.com/us?product\\_id=848&Page\\_Header=Bosch%20%20Key%20Features&ht](http://www.bosch-home.com/us?product_id=848&Page_Header=Bosch%20%20Key%20Features&htype=2)  
12 [ype=2](http://www.bosch-home.com/us?product_id=848&Page_Header=Bosch%20%20Key%20Features&htype=2) (see e.g. Ex. 4).

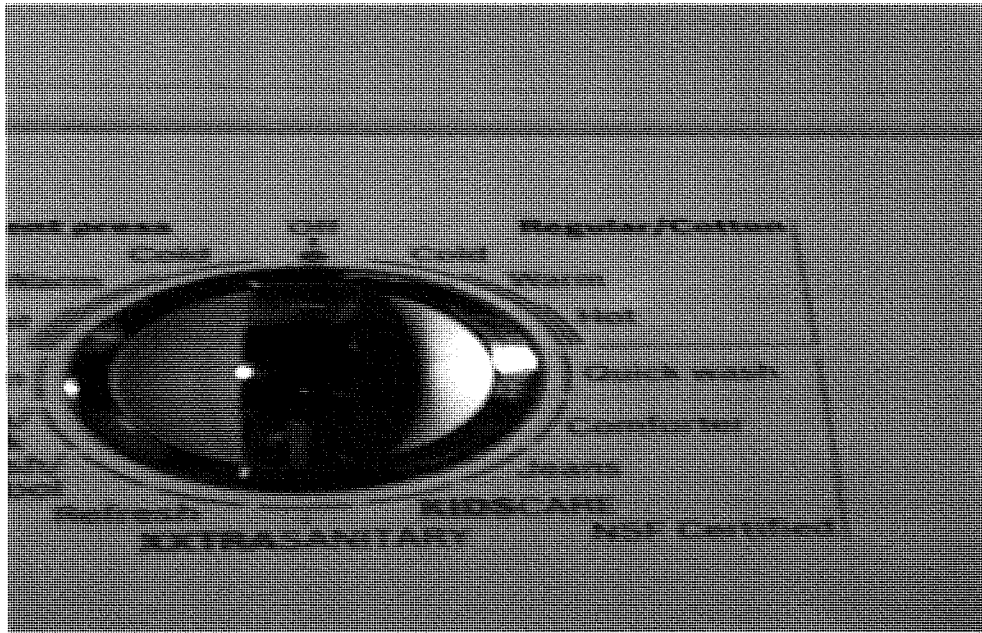
13 50. On the Bosch landing page on [bosch-home.com](http://bosch-home.com) she observed and read  
14 the partial representations "XXTRASANITARY – NSF Certified Eliminates 99.9%  
15 of Bacteria," "NSF Certified – Eliminates 99.9% of Bacteria," "Exceeds Energy Star  
16 2011 Guidelines – Uses only 151 KWh/yr.," "Bosch Washers Exceed Federal  
17 Energy Standards by up to 102%." Through the Bosch Nexxt 800 landing page on  
18 [bosch-home.com](http://bosch-home.com) she was able to view the Washer through interactive features she  
19 read words and labels on the Machines. Ms. Gibson used this feature to observe the  
20 labels "High Efficiency," "High Care," and "XXTRA SANITARY."

21 51. Nowhere on the [bosch-home.com](http://bosch-home.com) website or on the Washer did Bosch  
22 disclose that the washer had a high propensity to develop the Mold Problem, Foul  
23 Odors, Biofilm, or that it required Extraordinary Actions (defined below) that would  
24 cause her to incur Undisclosed Additional Operating Expenses.

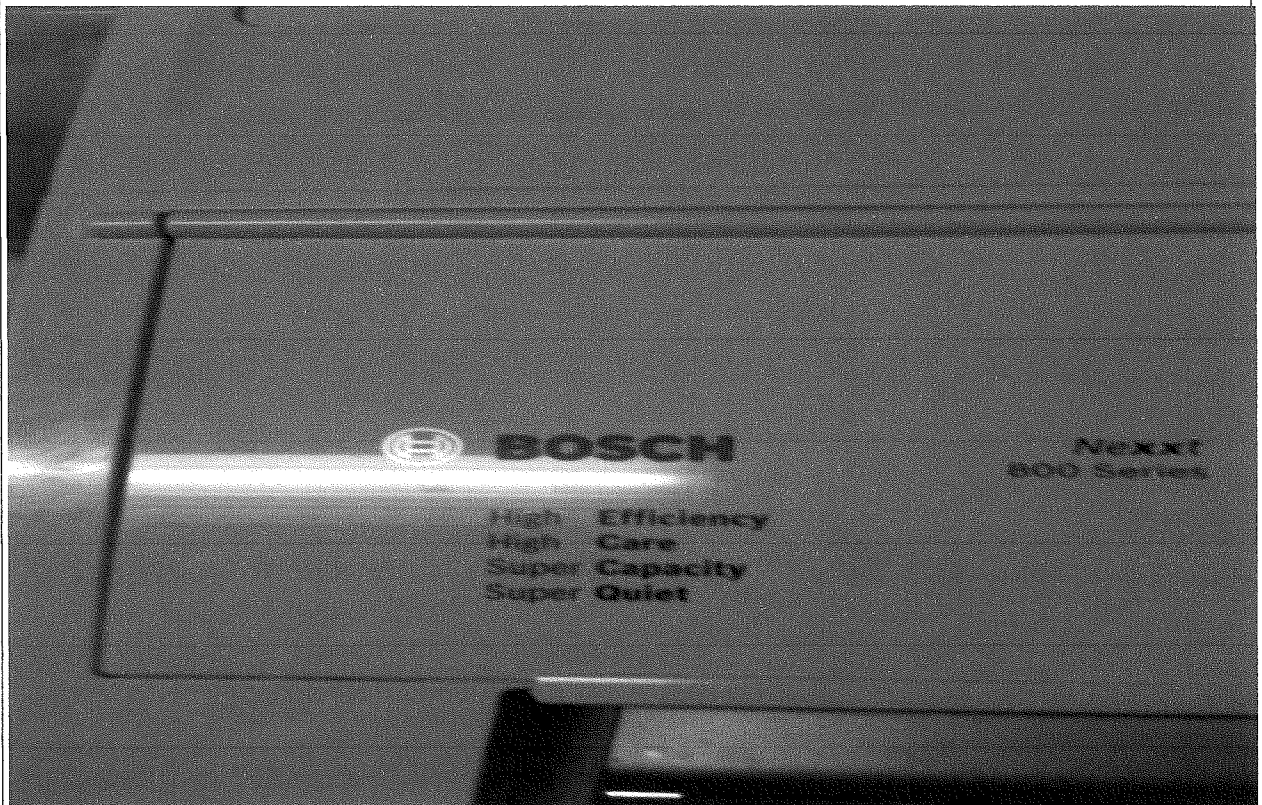
25 52. The following Figures depict the labels Ms. Gibson observed at the  
26 time of purchasing her Washing Machine:  
27  
28



**Figure 1: Right Side of Consol/Control Panel**

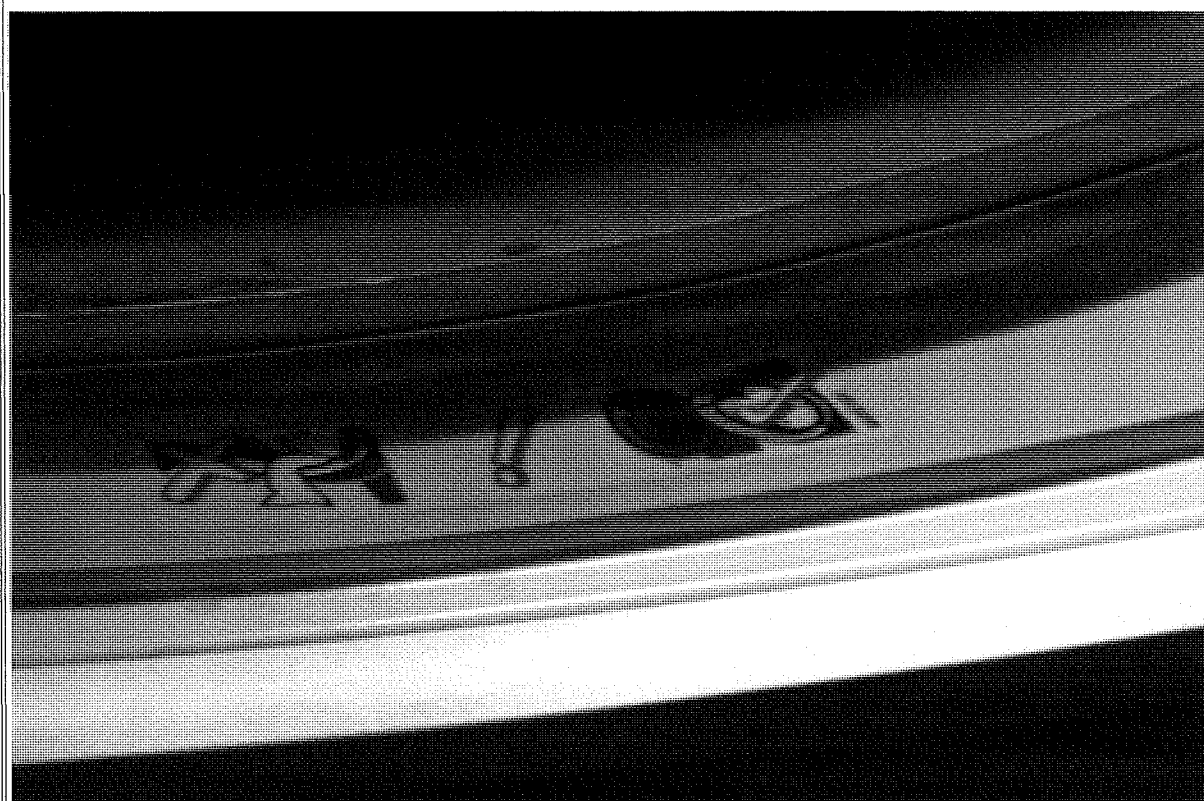


**Figure 2: Left Side of Consol/Control Panel**





**Figure 3: Right Side of the Consol/Control Panel**

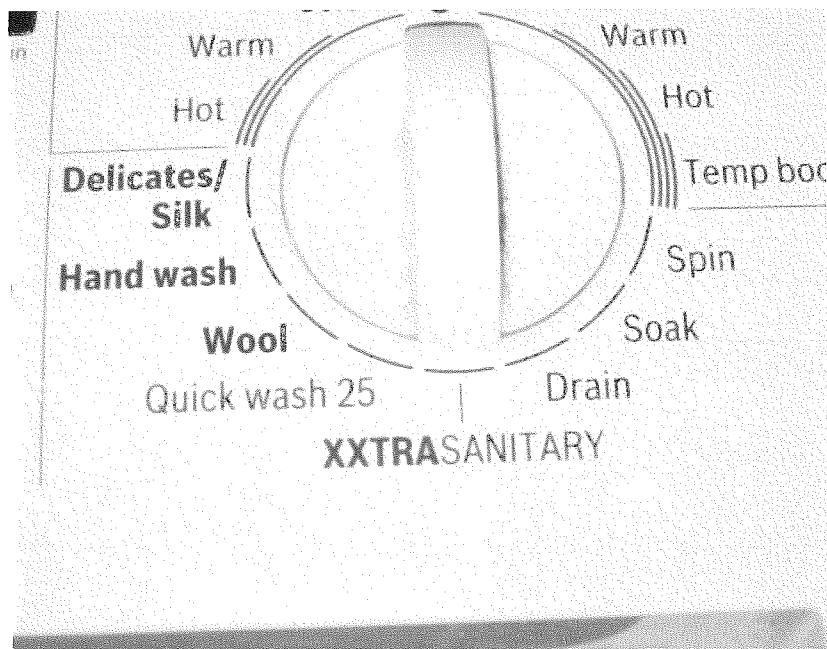


53. *[Intentionally Omitted]*

54. **Consumer Representative Isabella.** Ms. Isabella observed and examined a Washer at Showcase Furniture on September 19, 2007 at which time she specifically observed and read labels on the Washer including “High Efficiency,” “High Care” the warning labels, as well as the recommendation to use “High Efficiency Detergent.” Nowhere on the Washing Machine did Bosch disclose that the washer had a high propensity to develop the Mold Problem, Foul Odors, Biofilm, or that it required Extraordinary Actions that would cause her to incur Undisclosed Additional Operating Expenses.

55. The following Figures depict the labels Ms. Isabella observed at the time of purchasing her Washing Machine:

**Figure 5: Right Side of Control Panel**

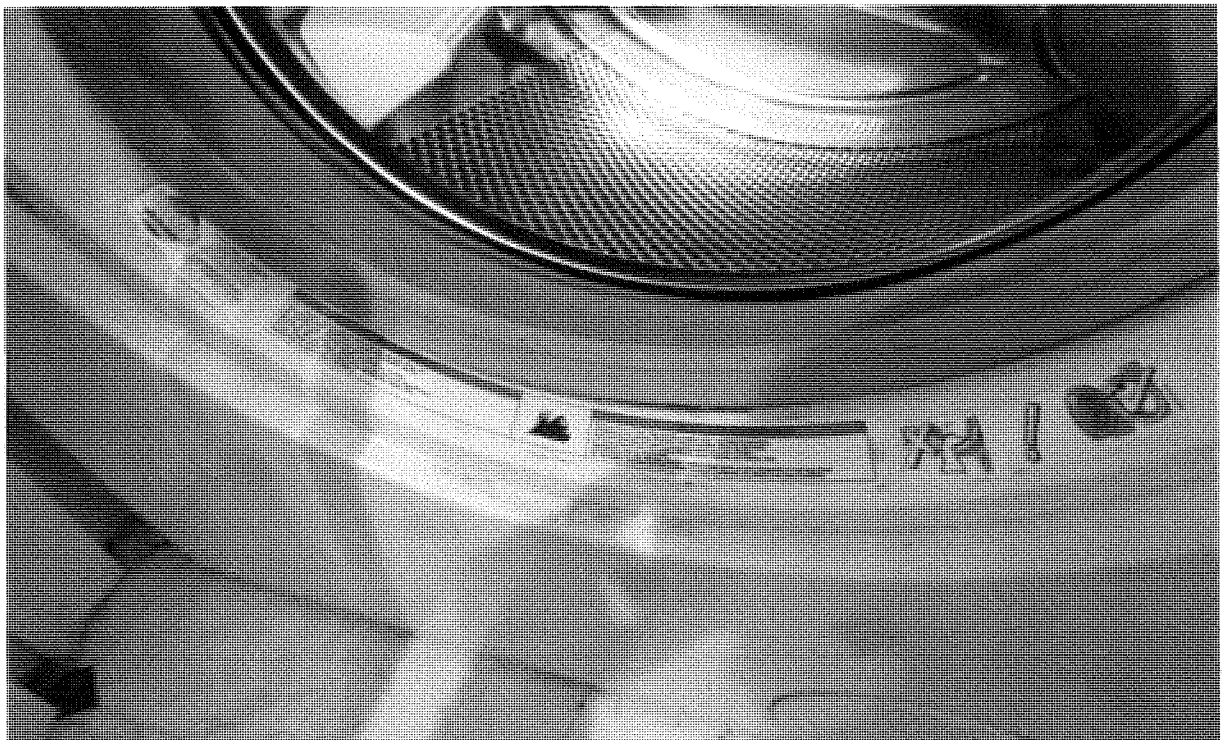




1 **Figure 6: Dispenser Lid/Left Side of Consol/Control Panel**



15 **Figure 7: Warning Labels on Door Frame**





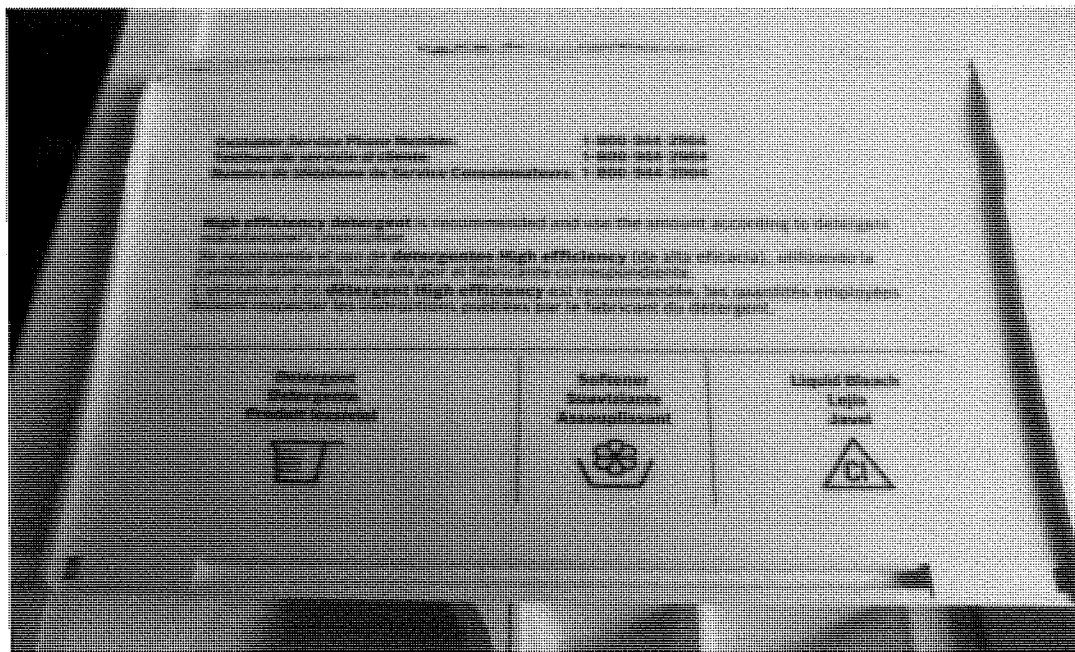
1        56. **Consumer Representative Demereckis.** Mr. Demereckis observed  
2 and examined a Washer at Grant's in Orland Park, IL on or about May 22, 2009,  
3 including opening the door, as well as the detergent dispenser lid. While at Grant's  
4 for the purpose of shopping for a new washer and dryer, Mr. Demereckis observed  
5 and read labels on the Washer itself, including the phrase "High Efficiency," the  
6 Woolite label, the recommendation to use "High Efficiency Detergent," as well as a  
7 yellow U.S. Department of Energy "EnergyGuide" label on or in the Machine.  
8 Nowhere on the Washing Machine that Mr. Demereckis observed at Grant's did  
9 Bosch disclose that the Washer had a high propensity to develop the Mold Problem,  
10 Foul Odors, Biofilm, or that it required Extraordinary Actions that would cause him  
11 to incur Undisclosed Additional Operating Expenses.

12        57. The following Figures depict the labels Mr. Demereckis observed at the  
13 time of purchasing her Washing Machine:

14  
15        **Figure 8: Console Overview**



**Figure 9: Dispenser Lid Open**

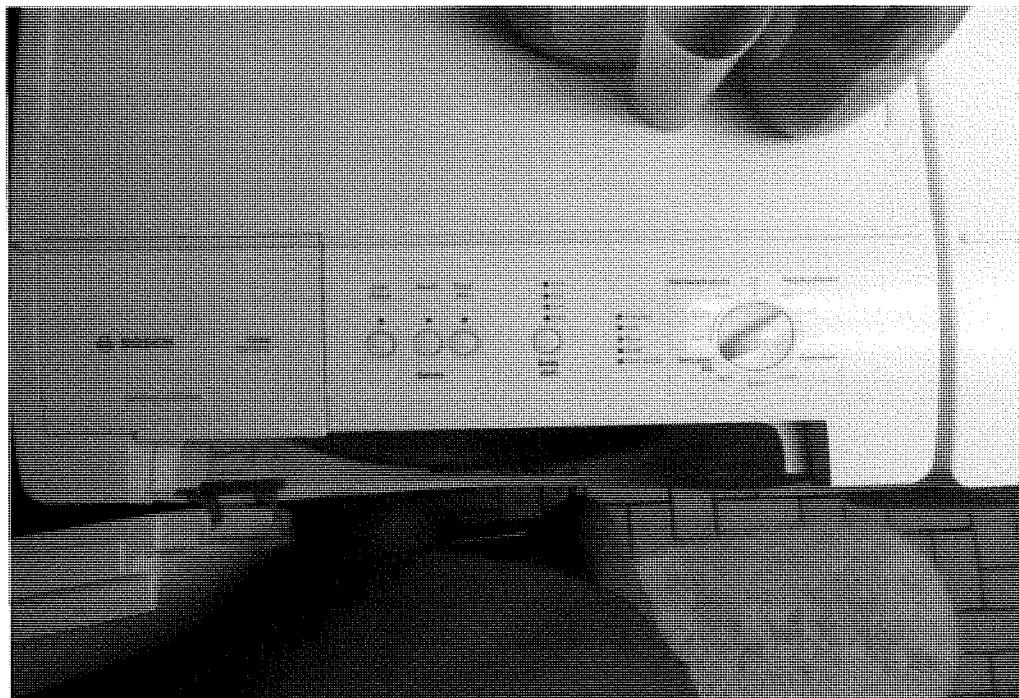


**Figure 10: Labels on Door Frame**





**Figure 11: Control Panel**



58. **Consumer Representative Wentworth.** Ms. Wentworth observed and examined a Washer at Pacific Sales on February 20, 2008 at which time she specifically observed labels on the Washer including “High Efficiency,” “High Care” the warning labels, as well as the recommendation to use “High Efficiency Detergent.” Nowhere on the Washer did Bosch disclose that the washer had a high propensity to develop the Mold Problem, Foul Odors, Biofilm, or that it required Extraordinary Actions (defined below) that would cause her to incur Undisclosed Additional Operating Expenses.

59. The Following figures depict the labels Consumer Representative Wentworth observed when deciding to purchase her Washing Machine:

**Figure 12: Console/Control Panel Overview**

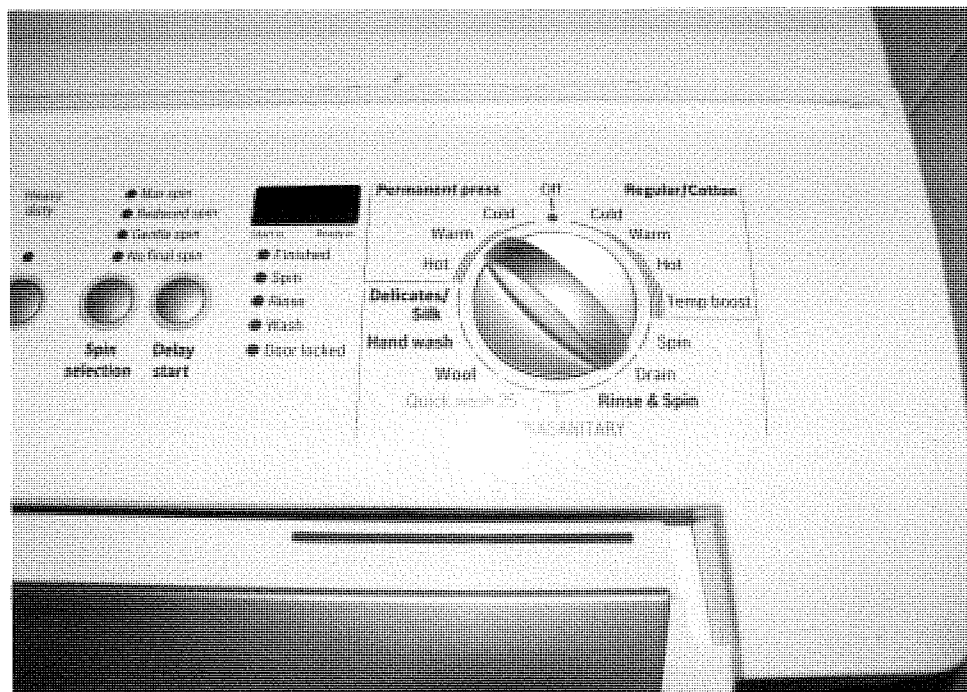




**Figure 13: Detergent Dispenser Lid on Left Side of Control Panel**



**Figure 14: Right Side of Control Panel**





**Figure 15: Underside of Detergent Dispenser Lid**

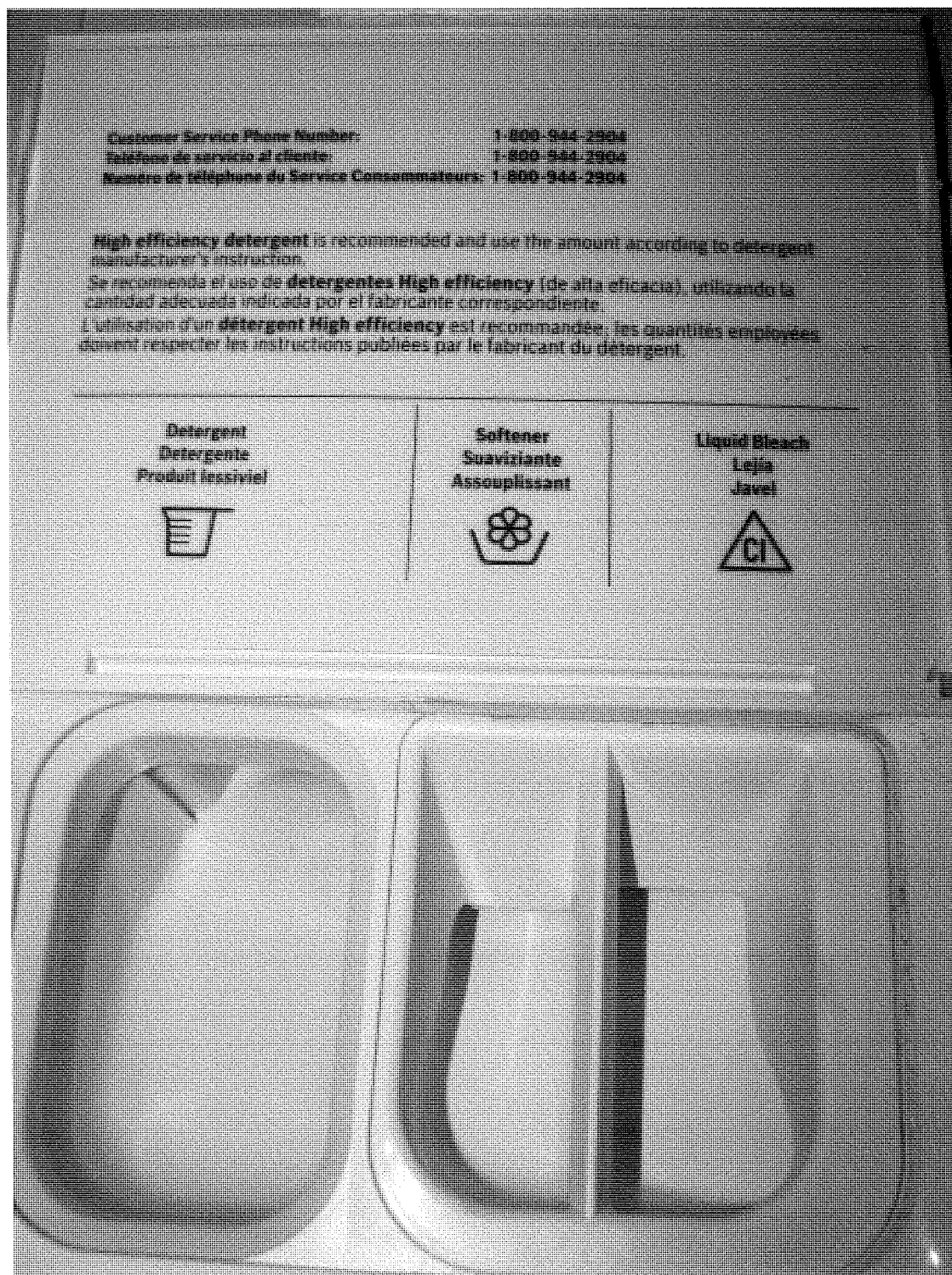




Figure 16: Warning Labels on Door Frame



#### WHERE:

60. Defendant omits the Material Facts on labels located on the Washing Machines themselves in retail stores where the Washing Machines are sold as specifically alleged herein for Consumer Representatives Gibson, Isabella, Demereckis and Wentworth in the immediately preceding paragraph. Bosch also omits the Material Facts on its website [bosch-home.com](http://bosch-home.com) as alleged herein for Consumer Representative Gibson.

#### WHY and HOW:

61. All the Material Facts are material because a reasonable consumer would consider them important when deciding whether to buy a Washing Machine.

1 Had Bosch disclosed the Material Facts, Consumer Representatives Gibson,  
2 Isabella, Demereckis and Wentworth would have acted differently by not buying the  
3 Machines or not paying as much for the Machines. Each one of Bosch's omissions  
4 of Material Fact are materially false and misleading:

5       62. **Omission of the Defective Parts:** the omission of the material fact that  
6 the Machines contain Defective Parts is false and misleading because noticeable  
7 and/or sufficient levels of bacteria and/or mold and bacteria and mold spores remain  
8 in the Clothes and the Washing Machines after use as evidenced by the Biofilm,  
9 Foul Odors, and Mold Problem that develop and accumulate in the Washing  
10 Machines and impregnate the Clothes washed in them and laboratory testing of  
11 swab samples taken from the Wentworth and Demereckis Machines. Attached as  
12 Exhibit 5, are testing results of swab samples taken from the Wentworth and  
13 Demereckis Machines which demonstrate fungal growth in both Machines. Had  
14 Bosch not concealed the Defective Parts and their deleterious effects, Plaintiffs  
15 would not have purchased the Washing Machines. Bosch had a duty to disclose the  
16 Defective Parts and their expected deleterious and effects because it was in  
17 exclusive possession of the knowledge regarding the existence of the Defective  
18 Parts and their deleterious effects and made incomplete representations of the  
19 Washing Machine's performance through labels such as "Xxtra Sanitary" while  
20 concealing the Defective Parts and the Biofilm, Mold Problem and Foul Odors that  
21 result from them. Bosch also had a duty to disclose the Defective Parts because it  
22 knew that they cause the Mold Problem which is material information directly  
23 related to safety and health as alleged herein. **Extraordinary Actions, Undisclosed**  
24 **Additional Operating Expenses, "High Efficiency," and "Energy Star"**  
25 **Omissions:** The partial representations of "High Efficiency" and Energy Star gave  
26 rise to a duty to disclose the need for Extraordinary Actions and resulting  
27 Undisclosed Additional Operating Expenses (defined below), material facts that  
28 Bosch suppressed. The "High Efficiency" and "Energy Star" representations were

1 known to be false by Bosch when they were made because Bosch recommends to  
2 consumers only after the point of purchase the material fact that they must regularly  
3 run extra empty hot-water cycles in an attempt to ameliorate the Biofilm, Foul  
4 Odors, and the Mold Problem in the Washing Machines. The omission of this  
5 information is false and misleading because when Washing Machine owners run the  
6 extra hot-water cycles, they lose the water and electricity savings that Bosch  
7 represented were the benefits and characteristics of owning its Energy Star-  
8 compliant Washing Machines. Bosch concealed its knowledge that consumers must  
9 regularly run extra empty hot-water cleaning cycles for its Washing Machines to  
10 operate as Bosch intends, which cause them to be inefficient. Bosch was also  
11 required to disclose the Extraordinary Action of leaving the door “ajar” between  
12 washes as it relates directly to safety of the Washing Machines as more fully alleged  
13 below.

14 63. Plaintiffs purchased the “Energy Star” Washing Machines on the basis  
15 that they would save water and energy. In reality, at the recommendation of Bosch  
16 and independently, Class members have to perform Extraordinary Actions and incur  
17 Undisclosed Additional Operating Expenses to combat the Mold Problem, foul  
18 Odors, and/or Biofilm, contrary to Bosch’s express representations that the Washing  
19 Machines would lead to water and energy savings.

20 64. **XXTRA SANITARY.** Bosch makes the partial representation that the  
21 Machine is capable of sanitizing Clothes, but does not disclose that the Machines  
22 have Defective Parts that cause the Mold Problem and impregnate Clothes with  
23 mold, mildew, and Foul Odors even when the XXTRA SANITARY cycle is used on  
24 a regular basis. A reasonable consumer would not knowingly purchase an appliance  
25 designed to clean Clothes that actually makes Clothes smell like mold and mildew.

26 65. Defendant was obliged to disclose the Material Facts because: 1)  
27 Defendant had exclusive knowledge of the Material Facts not known to Plaintiffs  
28 and the Class, since only Defendant had exclusive access to the aggregate data from

1 its retailers, its own tests, and complaints from its customers; 2) Defendant actively  
2 concealed and suppressed the Material Facts from Plaintiffs by knowing and not  
3 warning of the Defective Parts and their effects at the time of purchase and by  
4 performing warranty and/or repair work that it knew would not cure the Defective  
5 Parts or stop their effects, all of which was unknown to Plaintiffs, and by  
6 recommending remedies to complaining consumers that it knew would not cure the  
7 Defective Parts or resulting problems thereby causing damages; and/or 3) Defendant  
8 made partial representations through labels on its machines such as Energy Star,  
9 High Care, High Efficiency, and Xxtra Sanitary and Sanitary 170. As a result of  
10 Bosch's concealment of the Extraordinary Actions and the resulting Undisclosed  
11 Additional Operating Expenses, Washing Machine owners were not provided  
12 material information, known by Bosch, before they decided which brand of washing  
13 machine to buy. The Washing Machines are worth less than the price Plaintiffs paid  
14 for them, as ownership and operation of the Washing Machines will cost more  
15 and/or require more maintenance than the ownership and operation of comparable  
16 non-defective washing machines, the Machines fails to achieve their primary  
17 purpose of cleaning Clothes, and the value of the Washing Machines is diminished.

#### 18 **BREACH OF EXPRESS AND IMPLIED WARRANTIES**

19 66. Bosch created express warranties by affirmation of fact and fails to  
20 conform its Washers to its warranties thereby causing damages through the  
21 diminished value of Plaintiffs' Machines.

22 67. As to Bosch Sanitary Models (models that have the "Xxtra Sanitary" or  
23 "Sanitary" cycle label on the control panel) purchased by Consumer Representatives  
24 Wentworth, Gibson, and Isabella, Bosch warrants through labels on the Machines  
25 (e.g. See Figures 1, 5, 12 and 14) that the Bosch Sanitary Models are capable of  
26 sanitizing Clothes and creating sanitary conditions inside of themselves; in its  
27

1 Operating Instructions provided with the Washing Machines at the time of purchase,  
2 Bosch further warrants:

3       The Xxtra Sanitary cycle “heats water to 170°F and maintains the  
4       temperature for exactly three minutes. After killing 99.9% of most  
5       common household bacteria, the water is reduced to a gentler  
6       150°F to prevent clothing breakdown. The clothes are thoroughly  
7       cleaned and sanitized with no damage to fibers. (See Exhibit 6).

8       68. Bosch further warrants in the Operating Instructions provided with the  
9       Machines at the time of purchase:

10       The “XXTRA SANITARY” cycle “was specifically designed to  
11       eliminate most common household bacterium [sic] while providing  
12       gentle treatment of fabrics... hot water is introduced and then the  
13       internal heating element heats the water to 167°F-174°F for a  
14       minimum of three minutes. Clothes will be saturated in the hot  
15       water long enough to kill most common household bacterium [sic],  
16       yet without causing additional wear and tear to the clothes.” (See  
17       Exhibit 6).

18       69. Through these affirmations of fact, Bosch warranted that Bosch  
19       Sanitary Models would sanitize or sterilize Clothes and the Washing Machines  
20       themselves.

21       70. Similarly, for the Siemens ultraSense models, Bosch warrants through  
22       labels on the Washing Machines themselves the benefit of a “Sanitary 170” cycle  
23       that is capable of sanitizing Clothes and the Machines themselves. Bosch further  
24       warrants in the Siemens Operating Instructions that accompany the ultraSense  
25       models and that the “Sanitary170” cycle “kill[s] 99.99% of most common  
26       household bacteria.” (The Bosch and Siemens affirmations of fact described herein  
27       are collectively hereinafter referred to as “Express Warranties”).  
28



1           71. Consumer Representatives and California, Maryland, and New York  
2 Subclass members read and relied on these Express Warranties and/or the Express  
3 Warranties became part of the basis of the bargain between Consumer  
4 Representatives Wentworth, Gibson, and Isabella, and members of the California,  
5 Maryland, and New York Subclasses on the one hand and Bosch on the other hand.

6           72. Bosch breached these Express Warranties because it has failed, indeed  
7 refused, to conform the Washing Machines by removing and replacing the Defective  
8 Parts. By selling Machines with Defective Parts that cause Biofilm, the Mold  
9 Problem and Foul Odors Bosch has failed to eliminate the cause for the  
10 development of the most common household bacteria inside the Machines even  
11 after a reasonable number of attempts to conform the Machines to the Express  
12 Warranties.

13           73. The effects of the defective Machine parts were so extreme that  
14 Consumer Representatives Wentworth ceased using her Machine, because even  
15 after Bosch's attempt to repaired it, Ms. Wentworth's Machine continued to cause  
16 Biofilm to be deposited or developed within and upon the surface of the Outer Tub,  
17 within which the Clothes Basket rotates and in which Clothes are washed, on the  
18 Clothes Basket Support Bracket that is attached to the backside of Clothes Basket  
19 ("Clothes Basket Support Bracket ") and in, near and adjacent to the sump, which is  
20 part of the Outer Tub and the pump which is connected to and just below the Outer  
21 Tub all of which are parts located within the Washing Machines and on other parts,  
22 pieces, material and sections of the Washing Machines.

23           74. The operation of the Machine causes Biofilm, mold, bacteria, and  
24 deleterious organic matter to be distributed to almost all parts of the Machine which  
25 come into contact with wash water during and following the performance of the  
26 Machine's wash cycle.  
27  
28



1        75. By this transference of Biofilm, mold, bacteria, deleterious organic  
2 matter from parts into the wash water bacteria, mildew and fungus are transferred  
3 onto Clothes washed in the Washing Machines during the performance of the Xxtra  
4 Sanitary cycle.

5        76. Similarly, Consumer Representatives Wentworth, Gibson, and Isabella,  
6 continue to have Clothes impregnated with bacteria, mold, mildew and deleterious  
7 organic material that cause their Clothes to not be clean and to have offensive,  
8 obnoxious and foul odors after they are put through a Xxtra Sanitary cycle.  
9 Moreover, Plaintiffs' Machines continue to have the Mold Problem and Foul Odors  
10 following use of the Xxtra Sanitary, and Sanitary 170 cycles. Effectively,  
11 Representatives Wentworth, Gibson and Isabella have Machines that are the  
12 antithesis of a "washing machine." Their Washing Machines make their clothes  
13 dirty and smell bad.

14        77. Any limitations on remedies contained in Defendant's express  
15 warranties fail of their essential purpose and are unenforceable with respect to the  
16 Mold Problem alleged herein. Washing Machine owners who notified Bosch that  
17 their Washing Machines have the Mold Problem or the Foul Odors, were not  
18 provided any repairs, replacement of parts, or any other remedy that repairs or  
19 replaces the Defective Parts and defective parts that cause the existence of Biofilm,  
20 the Foul Odors and/or the Mold Problem.

21        78. As part of the sale of each Washing Machine, Defendant warranted that  
22 the defective Machines were of merchantable quality fit for the ordinary purpose for  
23 which washing machines are used, *i.e.*, to clean Clothes, make them smell  
24 appealing, and clean the Washing Machines themselves. In fact the Machines are  
25 not merchantable because they have the Defective Parts; whose presence in the  
26 Machines causes them to develop Biofilm, Foul Odors, the Mold Problem, and  
27  
28

1 damages and devalues the Clothes that go through wash cycles in the Washing  
2 Machines.

3 79. As to those Washing Machine owners to whom Defendant offered to  
4 repair or replace a part within their Washing Machines in response to their  
5 complaints of Biofilm, Foul Odors or the Mold Problem, the repair fell short of  
6 Defendant's warranty obligations because all Bosch "repairs" failed to remove all of  
7 the Defective Parts and resulted in the Machines continued development or  
8 accumulation of Biofilm, the exacerbation of the Mold Problem and Foul Odors.

9 80. Bosch's repair attempts did not conform the Machines to the Express  
10 Warranties. Following attempted repairs and after Plaintiff Wentworth and Class  
11 members changed how they used their Machines to comport with Bosch's post-sale  
12 changed use instructions, including the use of bleach and/or vinegar to clean the  
13 Machines of Biofilm, Foul Odors and/or the Mold Problem; Plaintiff Wentworth's  
14 and Class Members' Washing Machines continued to develop Biofilm and have  
15 present the Mold Problem and Foul Odors and their Clothes continued to emit foul,  
16 obnoxious and offensive odors.

17 81. Finally, while recognizing and admitting the scope and magnitude of  
18 the problems caused by the Defective Parts, among both its own employees, and at  
19 conferences of washing machine manufacturers, held by the Association of Home  
20 Appliance Manufacturers, and to salespeople and national retailers such as Best  
21 Buy, Pacific Sales and Lowes, Bosch consistently has denied that its Washing  
22 Machines had Defective Parts that caused them to develop Biofilm, Foul Odors or  
23 the Mold Problem.

24 ///

25 ///

26 ///

27 ///

28

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**BOSCH'S POST-SALE RECOMMENDED CARE DIRECTIONS  
ACCELERATE THE BREAK-DOWN OF THE MACHINES AND THE  
REPAIRS IT MADE TO THE MACHINES DID NOT REMOVE THE  
DEFECTIVE PARTS.**

82. Among the Extraordinary Actions that Bosch recommends its customers perform is wiping dry the door gasket after every wash and/or using a water and bleach mixture for the purpose of removing Biofilm and bioorganic material that develop on and in the rubber door gasket material. However these recommendations accelerate the deterioration of the door gasket by removing a lubricant that is on the door gasket. Deteriorated rubber door gaskets result in inadequate sealing of the door; this, in turn results in consumers having to pay additional money to replace door gaskets more frequently than they would if they did not have to wipe them, as directed by Bosch, with bleach mixtures to mitigate the Biofilm, Foul Odors and Mold Problem.

83. As explained above, Bosch also recommends that complaining Class members run empty cycles of bleach and hot water to try to rid their Machines of Biofilm, Foul Odors, and the Mold Problem. However, hot water and/or bleach may only kill bacteria and mold with which they come in contact, and will not kill all mold and/or bacteria spores. Because mold and bacteria establish themselves and survive in parts of the Washing Machines that do not come into contact with water, or in contact with insufficient quantities of hot bleach water, to kill the Biofilm, mold, bacteria and other organic material that has taken root in the Machines as a result of the Defective Parts (but receive moisture from the humid air or condensation inside the Washing Machines), and the spores of some or all of these common household organisms are very resistant to bleach and hot water, the Foul Odors and Mold Problem cannot be eliminated by Machine Owners operating their Machines by running empty cycles of bleach and hot water.

1       84. Bosch recommends to Plaintiffs that they leave the Washing Machine  
2 door ajar between washes to reduce the incidence and affects of Biofilm and the  
3 Mold Problem. Not only does this recommendation not remove or repair the  
4 Defective Parts, it does not solve or prevent Biofilm, Foul Odors and the Mold  
5 Problem and exposes children and pets to injury. Indeed, the Consumer Product  
6 Safety Commission is investigating the death of a 4 year-old girl who climbed into a  
7 front load machine that her younger brother turned on. In addition, LG, another  
8 manufacturer of front load washing machines, has recalled certain of its front load  
9 models in Korea to adjust the door lock so that the washer door can be opened from  
10 the inside following the death of a 7 year-old boy who suffocated inside a LG  
11 washer.

12       85. Bosch was in exclusive possession of information about the Defective  
13 Parts; that the Defective Parts would cause Biofilm, the Foul Odors, the Mold  
14 Problem, and the Undisclosed Additional Operating Expenses that Class Members  
15 would expend; all of which were material to Plaintiffs' decisions to buy the  
16 Washing Machines. Bosch had a duty, under the circumstances, to disclose the  
17 Defective Parts, Biofilm, the Foul Odors, the Mold Problem and the Undisclosed  
18 Additional Operating Expenses to Plaintiffs prior to completing their purchases.  
19 Nevertheless, Bosch has failed and refused to warn its customers, prior to the  
20 completion of their purchase, of the serious Defective Parts tin the Washing  
21 Machines, or to warn them about Biofilm, the Foul Odors, the Mold Problem and  
22 Undisclosed Additional Operating Expenses they will incur and pay for as a result  
23 of the Defective Parts. Instead, Bosch has kept silent while uninformed consumers  
24 purchased and continue to purchase the defective Washing Machines.

25 ///

26 ///



1           86. Bosch has also refused, and continues to refuse, to modify the  
2 Defective Parts, or how the Machines' parts are uniformly assembled into a working  
3 integrated product, so that the Machines do not produce Biofilm, the Foul Odors  
4 and the Mold Problem and cause their owners to pay for the Undisclosed Additional  
5 Operating Expenses. Bosch could cure the Mold Problem by not using defectively  
6 manufactured parts, which do not achieve Bosch's intent of their design, which is to  
7 result in the elimination and removal of all dirty wash water after a wash cycle is  
8 completed and reducing the moisture level in the Machines, after completion of a  
9 wash cycle, such that the assembled and integrated parts of the Machine do not  
10 develop Biofilm, the Foul Odors and the Mold Problem or cause their owners to pay  
11 for the Undisclosed Additional Operating Expenses. In light of Bosch's knowledge  
12 of the serious results caused by continuing to assemble Washing Machines with the  
13 Defective Parts Bosch knew, or should have known, when it sold Washing  
14 Machines to consumers that they had a value that was substantially less than the  
15 Bosch recommended retail purchase price and substantially less than the price range  
16 at which Bosch was informed or believed third parties would sell their Machines.

17           87. The presence of the Defective Parts substantially reduce the Washing  
18 Machines' value, in that: a) Bosch sold the Washing Machines without the intent to  
19 sell them as advertised; b) the Washing Machines do not have uses, benefits and  
20 characteristics Bosch represented they had, including the most basic use, benefit and  
21 characteristic; e.g. that the Washing Machines would clean Clothes placed in them  
22 during a wash cycle and would produce clean Clothes that did not smell offensive,  
23 noxious or foul; and c) the Washing Machines are not of the standard, quality or  
24 grade Bosch represented.

25           88. Further, Plaintiffs also reasonably expected that the Washing Machines  
26 would not require extensive and expensive repairs so as to eliminate and cease the  
27 recurrence of Biofilm, the Mold Problem and Foul Odors as a result of the inclusion  
28

1 of Defective Parts into the assembled Machines, which fact was known to Bosch  
2 before and at the time the Washing Machines were sold to Plaintiffs. If Bosch had  
3 not misrepresented and concealed material information regarding the presence of  
4 Defective Parts incorporated into the Washing Machines, Plaintiffs would not have  
5 purchased the Washing Machines at premium prices on the terms offered. As such,  
6 Defendant's acts and practices are separately and discretely each of the following:  
7 unfair, unlawful, fraudulent, and deceptive.

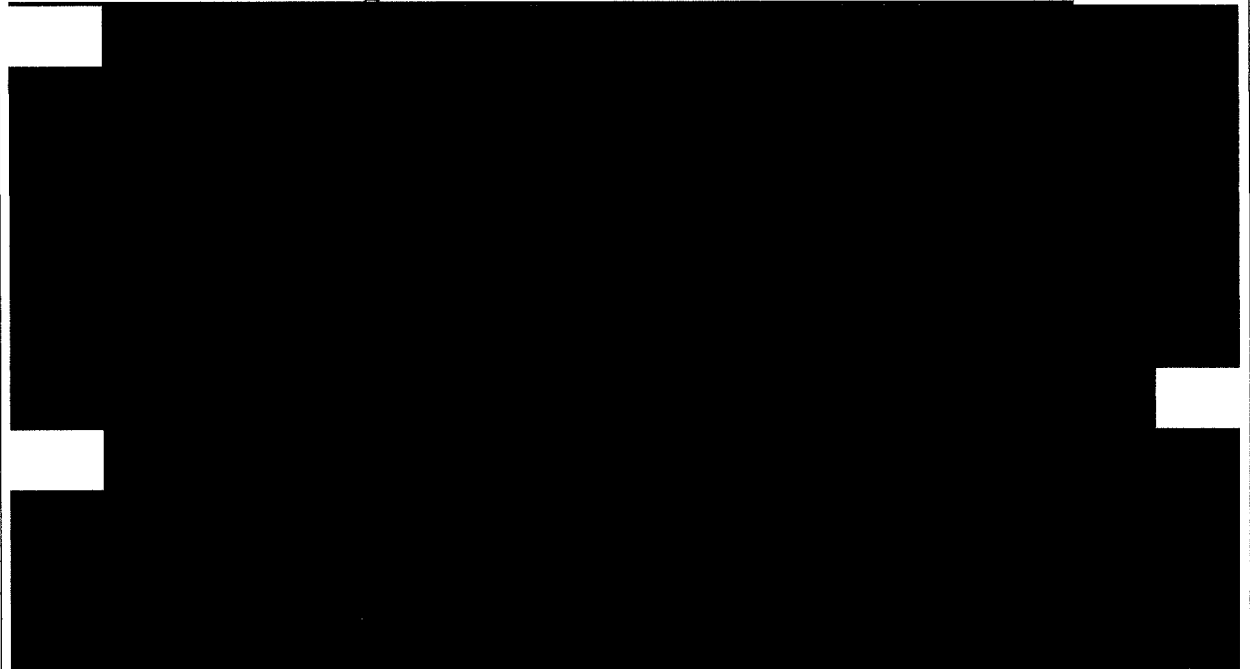
8 89. Bosch also has profited, either directly or indirectly, by concealing the  
9 inclusion of the Defective Parts into the completed and assembled Washing  
10 Machines because Bosch has been able to convince a large number of consumers to  
11 purchase the Washing Machines, and to pay Bosch directly for repair services and  
12 replacement parts (from which Bosch earns a profit), such as new door gaskets, to  
13 try to address the effects of the incorporation of the Defective Parts; which include  
14 Biofilm accumulation, the presence Foul Odors, the Mold Problem and paying  
15 Undisclosed Additional Operating Expenses *even though Bosch has no cost-*  
16 *effective way to remove and replace the Defective Parts*, and knows that  
17 replacement parts it offers the Class do not remove all of the Defective Parts and  
18 therefore even after repair by Bosch, the Machines continue to produce additional  
19 Biofilm, the Mold Problem, Foul Odors and unclean and offensive smelling  
20 Clothes.

21 90. Woolite is a fabric softener, which Bosch recommended be used. See  
22 e.g. a Woolite label shown on Figure 17 below on Consumer Representative Nancy  
23 Wentworth's Bosch Nexxt DLX Washing Machine. However, after the Machines  
24 were sold Bosch states that using fabric softeners in the Machines causes the  
25 development of Biofilm, the Mold Problem, Foul Odor and Clothes present in the  
26 Machine during a wash cycle to emit noxious and offensive odors.

**Figure 17: Woolite Label on Bosch Nexxt DLX Washing Machine**



**Bosch's Reckless Disregard of the Defective Parts and Mold Problem**







93. The Consumer Representatives and many Class members have alerted Defendant to the presence of Biofilm, Foul Odors, and the Mold Problem by complaining to Defendant directly and/or to Defendant's authorized retailers and service representatives and/or through the Bosch or Siemens internet web sites.

94. Furthermore, the Internet is replete with references and complaints regarding the Washing Machines that confirm that a) Class Members have the Defective Parts in their Machines and that b) the Defective Parts cause the development and presence of Biofilm, the Mold Problem, Foul Odors. Representative relevant excerpts from a sampling of these complaints are set forth below:

| Source  | Comments  |
|---|---|
| fixya.com<br>Nov 24, 2008<br><a href="http://www.fixya.com/support/t1288980-bosch_nexxt_series_washing_machine_front">http://www.fixya.com/support/t1288980-bosch_nexxt_series_washing_machine_front</a><br>(last accessed 3/31/2010) | <b>Our front loading washer has a terrible mold issue in the front gasket.</b> The water doesn't drain completely from the gasket area (the holes are roughly 3/4" above the bottom of the inside front of the gasket) and after each wash I wipe dry the remaining water. I cannot even close the door between washings, it must be left ajar. We were away for a week and my husband had closed the door...needless to say the gasket was covered in mold! Disgusting! <b>I even have to wipe it down with bleach periodically and that does not even remove all the mold.</b> I have read on another website other individuals with this problem, but no remedy. Have had the techs from the installer out and they do not know what to do to solve this. Ongoing problem for 2 years and I am sick of it. Please help. Have spoken to Bosch reps who say they have not heard of this problem, just referenced me to another repair company. |
| consumeraffairs.com<br>November 24, 2009<br><a href="http://www.consumera">http://www.consumera</a>   | We bought a new Bosch front loading washing machine in 2005 and have problems with it since the beginning. The gasket and spring would pop off and <b>we have had mold build up in the machine and front window and now everything smells like mold.</b>  |

|   |   |  |
|---|---|--|
| 1<br>2<br>3<br>4  | ffairs.com/homeowner<br>s/bosch_p4.html<br><br>(last accessed<br><br>3/31/2010)   |  |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16 | Epinions.com<br>Nov 22 2007<br>http://www0.epinions.<br>com<br>/review/pr-<br>Siemens_ultraSenseT_<br>3<br>_7_Cu_Ft_15_Progra<br>m<br>Super Capacity_<br>Washer White_<br>WFXD5200UC<br>/content_4083106156<br>84<br><br>(last accessed<br><br>3/31/2010) | I Have a Siemens washer model WFXD5200. I have had this washer for about 2 years. <b>I have had a problem trying to keep the mold from growing on the door seal.</b> The washer holds water in the door gasket. This water will sit in the door seal and give the mold a place to grow. <b>The mold will create an unpleasant smell that can affect the scent of your clean laundry if left in the machine when washing is finished.</b> I have tried to dry the water in the seal and also leave the door open to let door area air dry. I have been unable to resolve this problem and am not pleased with this washing machine. I will be contacting the manufacturer to see what they will do to remedy this problem. I would like to know if this is common with other buyers and if a solution was offered by the company. I have tried to go to the web site and talk to customer service to see if any solution was available but the web site is not available. <b>I paid around \$1,000 dollars for this machine and feel like this mold problem is a factory defect in the door seal.</b> |
| 17<br>18<br>19<br>20<br>21<br>22<br>23<br>24                    | consumeraffairs.com<br>March 27, 2010<br>http://www.consumera<br>ffairs.com/homeowner<br>s/bosch.html<br><br>(last accessed<br><br>3/31/2010)   | We purchased a Bosch Next 700 front loading washing machine. <b>We have had to replace gasket after gasket. All tear at same place. Now we have mold.</b> Why is no one doing anything about these poorly constructed washers? Water leakage causing mold. Water danger near electric circuits etc...  |

95. As a result of the flurry of consumer complaints regarding the Defective Parts that Defendant would not repair or remove and replace, and as a

1 testament to the widespread nature of the problem, several entrepreneurs created  
2 and marketed products designed to treat, eliminate and/or minimize the Foul Odors  
3 and Mold Problems caused by the Washing Machines' Defective Parts. These  
4 products include SmellyWasher, NuFreshNow, Tide Washing Machine Cleaner, and  
5 Affresh. Due to the widespread and intractable nature of the Foul Odors and the  
6 Mold Problem once they have manifested, these entrepreneurs have sold tens of  
7 thousands, if not millions, of their products to consumers. None of these products  
8 fix or replace the Defective Parts that cause Biofilm, the Foul Odors, the Mold  
9 Problem and Machine owners to pay the Undisclosed Additional Operating  
10 Expenses. Indeed, these products are but one of the Undisclosed Additional  
11 Operating Expense Class Members pay.

12 96. Defendant failed to adequately inspect, prototype, and test the  
13 Defective Parts before including them in the assembled Washing Machines.

14 97. Before Defendant began selling the Washing Machines in the United  
15 States, Defendant knew, or was reckless in not knowing, that: (a) the Defective  
16 Parts were defective; b) the assembled Machines, which incorporated the Defective  
17 Parts and operating controls were, as an assembled and integrated product,  
18 defective; c) the assembled and integrated Machines were defective in the  
19 workmanship and manner in which they were incorporated into an integrated  
20 finished product; and (d) they were not of merchantable quality or fit for their  
21 ordinary purpose.

22 98. Plaintiffs are informed and believe Defendant's employees, officers  
23 and agents, knew, discussed and acknowledged to each other that the Biofilm, Foul  
24 Odors, and the Mold Problem resulted from, *inter alia*, the inclusion Defective  
25 Parts into the Washing Machines and the incorporation and assembly of the  
26 Defective Parts and operation controls into the a finished integrated washing  
27 machine.  
28



1            99. Despite having repeated notice that there were Defective Parts in its  
2 Washing Machines that the presence of Defective Parts in the Washing Machines  
3 causes the accumulation of Biofilm, the Foul Odor and the Mold Problem, and that  
4 the reasonable expectations of consumers, created by Defendant's marketing of its  
5 Washing Machines is that the Machines would not develop Biofilm, the Foul Odor  
6 or the Mold Problem or would require Extraordinary Actions or Undisclosed  
7 Additional Operating Expenses, Defendant has engaged and continues to engage in  
8 the following routine, albeit, wrongful course of conduct, where Defendant:

9            a) Sells Washing Machines that have the Mold Problem in the  
10 premium segment of the washing machine market;

11            b) Designs parts, and integrated and assembled finished Washing  
12 Machines, which it in turns sells which have Defective Parts that cause Biofilm, the  
13 Foul Odors and the Mold Problem and require Machine owners to pay Undisclosed  
14 Additional Operating Expenses;

15            c) Fails to disclose that the Washing Machines have the Defective  
16 Parts within them that cause Biofilm, the Foul Odors and the Mold Problem and  
17 require Machine owners to pay Undisclosed Additional Operating Expenses;

18            d) Continues to represent the Washing Machines as "High  
19 Efficiency" and "High Care" without disclosing material facts, such as that  
20 Machine owners will have to take Extraordinary Actions and pay Undisclosed  
21 Additional Operating Expenses.

22            e) Continues to represent expressly or by necessary implication that  
23 the Washing Machines that Plaintiffs purchased were dependable, cost effective,  
24 and would provide outstanding cleaning and performance as washing machines  
25 when it knew that these statements were false;

26            f) Continues to manufacture, market, advertise, distribute, and sell  
27 the Washing Machines to consumers when it knew or should have known the  
28 Machines were not dependable and would not withstand normal operation;

1 g) Fails to disclose to Plaintiffs the substantial risk of Washing  
2 Machine failure;

3 h) Fails to disclose the Defective Parts or the defective  
4 workmanship that results in an integrated defective finished product;

5 i) Fails to disclose that many Washing Machine owners reported to  
6 Bosch that when using the Machine as it directed, their Machines developed  
7 Biofilm, the Foul Odors, and the Mold Problem (or that it's attempts to stop the  
8 presence of Biofilm, the Mold Problem or Foul Odors did not include replacing all  
9 of the Defective Parts; and therefore its repair efforts were unsuccessful and futile);

10 j) Fails to implement a recall or repair program to adequately  
11 announce to Plaintiffs the presence of the Defective Parts, that the Machines have a  
12 high propensity to develop Biofilm, the Foul Odors and the Mold Problem and that  
13 Machine owners will have to pay Undisclosed Additional Operating Costs caused  
14 by the Defective Parts and defective Machines. And fails to provide, without charge  
15 to Plaintiffs, an effective solution to a) repair the Defective Parts, b) replace the  
16 Defective Parts with non-defective parts or c) stop the Machines from developing  
17 Biofilm, the Mold Problem or Foul Odors;

18 k) Fails to take action to correct its concealment of material  
19 information or false or misleading implied or express representations about the use,  
20 benefits, characteristics, standard, quality, grade and performance of its Washing  
21 Machines; and

22 l) Fails to disclose that despite following its recommended actions  
23 for the operation of the Washing Machines found within the Defendant's "Operating  
24 Instruction" manual, the Washing Machines will develop Biofilm, the Foul Odors,  
25 the Mold Problem and Plaintiffs will pay Undisclosed Additional Operating  
26 Expenses.

27 100. As a result of Defendant's deceptive conduct and concealment of  
28 material information about its Washing Machines, as well as Defendant's other acts

1 and omissions described in this Complaint, Defendant has caused Plaintiffs to suffer  
2 injury as a result of the Defective Parts it incorporated into the assembled and  
3 finished Washing Machines, including, but not limited to:

- 4 a) Plaintiffs overpaid for a defective product;
- 5 b) The value of Plaintiffs' Machines is less than it would have been,  
6 if the Washing Machines did not have the Defective Parts; and
- 7 c) Plaintiffs unknowingly spent money for futile repair attempts of  
8 their Washing Machines, and other purported remedies, which money they would  
9 not have spent but for the presence of the Defective Parts, Defendant's concealment  
10 of material information about the Washing Machines and the efficacy of the  
11 Extraordinary Actions.

12 101. If Plaintiffs had known that their Washing Machines had Defective  
13 Parts, that would cause the Washing Machines to develop Biofilm, the Mold  
14 Problem and, Foul Odors and require them to pay Undisclosed Additional Operating  
15 Expenses, they would not have paid the significant sums of money that they paid for  
16 the Washing Machines.

### 17 **CLASS ACTION ALLEGATIONS**

18  
19 102. Sharon Cobb, Beverly Gibson, Trish Isabella, Dennis Demereckis and  
20 Nancy Wentworth bring this action on behalf of themselves and all others similarly  
21 situated as a class action pursuant to Rule 23 of the Federal Rules of Civil  
22 Procedure.

23 103. The classes which the Consumer Representatives seek to represent are  
24 defined as follows:

25 104. A class consisting of all "consumers" as defined by Cal. Civ. Code §  
26 1761(d) residing in the United States who purchased, not for resale, a Bosch or  
27 Siemens 27" or 24" Horizontal Axis/Front-Loading Automatic Clothes Washers,  
28 including, but not limited to, Bosch Axxis, Nexxt, and Vision Models, and Siemens



1 ultraSense and ultraStack models (the “Nationwide Class”). The Nationwide Class  
2 seeks certification of claims based on Cal. Bus. & Prof. Code § 17200 *et seq.*  
3 (“UCL”), Cal. Bus. & Prof. Code § 17500 *et seq.* (“FAL”), and Cal. Civ. Code §  
4 1750 *et seq.* (“CLRA”).

5 105. In addition to, and in the alternative to the claims asserted on behalf of  
6 the Nationwide Class, Consumer Representative Wentworth also brings this action  
7 on behalf of a subclass consisting of all consumers who purchased a Bosch or  
8 Siemens 27” or 24” Horizontal Axis/Front-Loading Automatic Clothes Washers,  
9 including, but not limited to, Bosch Axxis, Nexxt, and Vision Models, and Siemens  
10 ultraSense and ultraStack models in the State of California primarily for personal,  
11 family or household purposes (the “California Subclass”).

12 106. In addition to, and in the alternative to the claims asserted on behalf of  
13 the Nationwide Class, Consumer Representative Demereckis also brings this action  
14 on behalf of a subclass consisting of all persons who purchased a Bosch or Siemens  
15 27” or 24” Horizontal Axis/Front-Loading Automatic Clothes Washers, including,  
16 but not limited to, Bosch Axxis, Nexxt, and Vision Models, and Siemens ultraSense  
17 and ultraStack models in the State of Illinois for personal, family or household  
18 purposes (the “Illinois Subclass”).

19 107. In addition to, and in the alternative to the claims asserted on behalf of  
20 the Nationwide Class, Consumer Representative Gibson also brings this action on  
21 behalf of a subclass consisting of all persons who purchased a Bosch or Siemens  
22 27” or 24” Horizontal Axis/Front-Loading Automatic Clothes Washers, including,  
23 but not limited to, Bosch Axxis, Nexxt, and Vision Models, and Siemens ultraSense  
24 and ultraStack models in the State of Maryland for personal, family or household  
25 use (the “Maryland Subclass”).

26 108. In addition to, and in the alternative to the claims asserted on behalf of  
27 the Nationwide Class, Consumer Representative Isabella also brings this action on  
28 behalf of a subclass consisting of all persons who purchased a Bosch or Siemens

1 27" or 24" Horizontal Axis/Front-Loading Automatic Clothes Washers, including,  
2 but not limited to, Bosch Axxis, Nexxt, and Vision Models, and Siemens ultraSense  
3 and ultraStack models in the State of New York for personal, family or household  
4 use (the "New York Subclass").

5 109. The California Subclass, Illinois Subclass, Maryland Subclass, and  
6 New York Subclass are referred to collectively herein as the "Subclasses."

7 110. Excluded from the Nationwide Class, and the Subclasses are (i)  
8 Defendant, any entity in which Defendant has a controlling interest or which has a  
9 controlling interest in Defendant, and Defendant's legal representatives,  
10 predecessors, successors and assigns; (ii) governmental entities; (iii) Defendant's  
11 employees, officers, directors, agents, and representatives and their family members;  
12 and (iv) the Judge and staff to whom this case is assigned, and any member of the  
13 Judge's immediate family.

14  
15 **CALIFORNIA'S SUBSTANTIVE LAWS APPLY TO THE PROPOSED**  
16 **NATIONWIDE CLASS**

17 111. California's substantive laws apply to the proposed Nationwide Class,  
18 as defined herein, because Plaintiffs properly bring this Complaint in this District.

19 112. California's substantive laws may be constitutionally applied to the  
20 claims of Plaintiffs and the Nationwide Class under the Due Process Clause, 14th  
21 Amend., § 1, and the Full Faith and Credit Clause, Art. IV., § 1, of the U.S.  
22 Constitution. California has significant contacts, or a significant aggregation of  
23 contacts, to the claims asserted by each Consumer Representative and all Class  
24 members, thereby creating state interests that ensure that the choice of California  
25 state law is not arbitrary or unfair.

26 113. Defendant's United States headquarters and principal place of business  
27 is located in California. Bosch also owns property and conducts substantial business  
28 in California, and therefore California has an interest in regulating Defendant's

1 conduct under its laws. Defendant's decision to reside in California and avail itself  
2 of California's laws renders the application of California law to the claims herein  
3 constitutionally permissible.

4 114. California is also the location where Nancy Wentworth and a  
5 significant number of Class members were injured by virtue of the misconduct  
6 alleged herein. Nancy Wentworth resides in California and bought her Washing  
7 Machine in California. A substantial number of members of the proposed  
8 Nationwide Class also reside in California and bought Bosch Machines in  
9 California.

10 115. California is also the State from which Defendant's misconduct  
11 emanated and from which it disseminated its omissions. This conduct similarly  
12 injured and affected the Consumer Representatives and Class members residing in  
13 other states of the United States. For instance, Defendant's marketing efforts  
14 relating to the Washing Machines were created and orchestrated from its  
15 headquarters in California. More specifically, California has the following  
16 significant contacts to the claims of Plaintiffs and Class members:

17 a) Defendant's California office serves as the headquarters for its  
18 washing machine design team, as well as marketing, sales, and customer support  
19 departments in the United States and provides all sales support;

20 b) Upon information and belief, all corporate decisions regarding  
21 the Washing Machines, and the representations and acts of concealment which are  
22 the subject of this lawsuit were directed by, or disseminated from, Bosch  
23 representatives working in California or directly reporting to superiors situated in  
24 California;

25 c) Defendant's employees who were involved in and are  
26 knowledgeable about the marketing and advertising of Bosch's Machines, executive  
27 offices, and sales, marketing, finance, logistics, information technology, human  
28 resources and customer support departments are located in California;



1 d) When members of the proposed Nationwide Class call the  
2 warranty service telephone number listed on the Warranty, they speak with  
3 Defendant's employees located at its Huntington Beach, California headquarters  
4 who regularly deny Class members' warranty claims; and

5 116. The application of California's laws to the Nationwide Class is also  
6 appropriate under California's choice of law rules because California has significant  
7 contacts to the claims of the Consumer Representatives and the proposed  
8 Nationwide Class, California has a greater interest in applying its laws here than any  
9 other interested states, and California's interests would be more impaired if other  
10 states' laws were applied instead of California's.

11 117. This action has been brought and may properly be maintained as a class  
12 action, pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure  
13 because there is a well-defined community of interest in the litigation and the  
14 proposed class is easily ascertainable:

15 a) Numerosity. The Washing Machines were sold and distributed by  
16 Defendant throughout the United States. The Consumer Representatives are  
17 informed and believe that the proposed putative Class is made-up of tens of  
18 thousands of customers throughout the United States.

19 b) Common Issues Exist and Predominate. Common questions of law  
20 and fact exist as to all members of the Class and predominate over any questions  
21 which affect only individual members of the Class. The Washing Machines all have  
22 the Defective Parts and have universally and uniformly caused the development of  
23 Biofilm, the Mold Problem and Foul Odors; as well as caused each Class Member to  
24 pay Unexpected Operating Costs; the Washing Machines do not differ in any  
25 manner that is relevant to the Consumer Representatives' allegations of Defect  
26 Parts, and the damage and harm caused thereby. The Consumer Representatives  
27 allege herein in greater detail that the Machines all have the same Defective Parts  
28 and that the finished integrated Washing Machines were defective when their

1 assembly was completed, when they left Defendant's possession and control, and as  
2 they now exist and are being used throughout the United States. There is a well-  
3 defined community of interest in the questions of law and fact involved and that  
4 affect Plaintiffs who purchased the Washing Machines, and they all suffer from the  
5 same Defective Parts and the defective Washing Machine as it was assembled and  
6 sold by Defendant. These questions of law and fact predominate over questions that  
7 affect only individual class members.

8 The common questions of law and fact include, without limitation:

- 9 (1) Whether the Washing Machines' Defective Parts are defective;
- 10 (2) Whether the Washing Machines, given that they were assembled  
11 with Defective Parts are a defective finished product;
- 12 (3) Whether Defendant knew and/or recklessly disregarded the fact  
13 that the Washing Machines were and are defective;
- 14 (4) Whether Defendant concealed, and failed to disclose to the  
15 Class, material facts from its labels, communications and disclosures to Plaintiffs  
16 regarding the Defect Parts, which are present in all of Defendant's Washing  
17 Machines;
- 18 (5) Whether Defendant has engaged in unfair methods of  
19 competition, unconscionable acts or practices, and unfair or deceptive acts or  
20 practices in connection with the sale of the Washing Machines;
- 21 (6) Whether Defendant violated California, and in the alternative,  
22 Illinois, Maryland, and New York, consumer protection statutes;
- 23 (7) Whether Defendant breached express warranties created by  
24 affirmations of fact;
- 25 (8) Whether Defendant breached the implied warranty of  
26 merchantability under NY UCC § 2-314 and the Song-Beverly Act;
- 27 (9) Whether, as a result of Defendant's conduct, Plaintiffs have  
28 suffered damages; and if so the appropriate amount thereof; and

1 (10) Whether, as a result of Defendant's misconduct, Plaintiffs are  
2 entitled to equitable relief and/or other relief, and, if so, the nature of such relief.

3 These questions of law and fact predominate over questions that affect only  
4 individual Class members and there is a well-defined community of interest in the  
5 questions of law and fact involved and that affect the Class.

6 c) Typicality. The Consumer Representatives' claims are typical of the  
7 claims of the Class members in that the Consumer Representatives and Class  
8 members have Washing Machines with the same Defective Parts and, which share  
9 the same defective assembly, workmanship and that are defective as an integrated  
10 and assembled finished product. Defendant repeatedly made the same, if not nearly  
11 identical, uniform omissions of material information about the Defective Parts, the  
12 Machines' performance and the effects caused by the Defective Parts and the use  
13 and ownership of the defective Washing Machines. Therefore the claims of the  
14 Consumer Representatives are and will be typical of Class members.

15 d) The Class is Ascertainable. The Consumer Representatives have  
16 adequately defined the Nationwide Class and Subclasses so the Court will be able to  
17 use the definitions to determine class membership.

18 e) Adequacy. The Consumer Representatives will fairly and  
19 adequately represent the interests of all Class members. Consumer Representatives  
20 have each purchased a Washing Machine and are adequate representatives of the  
21 Class as they have no interests which are adverse to the interests of absent Class  
22 members. The Consumer Representatives have retained counsel with substantial  
23 experience and success in the prosecution of complex defective product and  
24 consumer protection class action litigation.

25 f) Superiority. A class action is superior to other available means for  
26 the fair and efficient adjudication of this controversy. Class action treatment will  
27 permit a large number of similarly situated persons to prosecute their common  
28 claims in a single forum simultaneously, efficiently and without duplication of

1 effort and expense that numerous individual actions would necessarily cause. The  
2 disposition of their claims in this case and as part of a single class action lawsuit,  
3 rather than thousands of individual lawsuits, will benefit the parties and greatly  
4 reduce the aggregate judicial resources that would be spent if this matter were  
5 handled as hundreds of separate lawsuits. Furthermore, given the extraordinary  
6 expenses and burden in conducting the discovery and presentation of evidence  
7 about the Defective Parts and the defective condition of the assembled Washing  
8 Machines, it is extremely unlikely, and practically impossible for Machine Owners  
9 to obtain equitable redress from Defendant, while an important public interest will  
10 be served by addressing the matter as a class action. Moreover, separate  
11 prosecution by thousands of individual members of the Class would likely establish  
12 inconsistent standards of conduct for the Defendant and result in the impairment of  
13 and potential harm to, Class members' rights and the disposition of their interests  
14 through actions to which they were not parties. The Consumer Representatives are  
15 informed and believe that a great amount of time and expense will be saved by  
16 conducting the discovery and presentation of evidence about the Defective Parts in  
17 the Washing Machines in a single class action lawsuit, in contrast to the repeated  
18 discovery and presentation of evidence in hundreds of separate lawsuits brought on  
19 the common questions presented by the allegations of this complaint. The  
20 Consumer Representatives know of no difficulty that will be encountered in the  
21 management of this litigation which would preclude its maintenance as a class  
22 action.

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**FIRST CAUSE OF ACTION**

**Asserted On Behalf Of the Nationwide Class, and Alternatively,  
On Behalf of the California Class  
(Violations of Cal. Bus. & Prof. Code § 17200 *et seq.*)**

120. The Consumer Representatives repeat and re-allege all prior paragraphs and incorporate them as if fully set forth herein.

121. Defendant has engaged in unfair, unlawful, and fraudulent business acts or practices as set forth above.

122. The Consumer Representatives bring this cause of action on behalf of themselves and the Nationwide Class, or in the alternative, the California Class, pursuant to California Business and Professions Code, § 17200, *et seq.*

123. Defendant's conduct constitutes unfair business acts and/or practices because Defendant's practices have caused and are likely to cause substantial injury to Plaintiffs which injury is not reasonably avoidable by Plaintiffs as alleged herein.

124. Defendant's acts and practices of selling defective Washing Machines offends an established public policy or are immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers as alleged herein

125. Furthermore, Bosch acts and practices of selling defective Washing Machines threaten an incipient violation of antitrust laws and/or consumer protection statutes, or violate the policy and spirit of one of those laws because the effect of the acts and practices are comparable to or the same as a violation of the law or otherwise significantly threaten or harm competition as alleged herein.

126. Defendant's acts and practices are unlawful because they violate California Civil Code § 1668. Defendant's acts and practices are also unlawful because they violate the Song-Beverly Act, Civil Code §§ 1790 *et seq.*, the Consumer Legal Remedies Act, Civil Code §§ 1750 *et seq.*, Cal. Commercial Code § 2313, Bus. & Prof. Code § 17500, and the MMWA.

- i. Defendant violates Cal. Bus. & Prof. Code § 17500 as alleged throughout this Complaint and in the Second Cause of Action, incorporated hereto by reference.
- ii. Defendant violated the CLRA as alleged throughout this Complaint and in the Third Cause of Action incorporated hereto by reference.
- iii. Defendant violates Cal. Civ. Code § 1790 et seq. and Cal. Comm. Code §§ 2313 and the MMWA as alleged throughout this Complaint, and in the Fourth, Fifth, and Sixth Causes of Action, incorporated hereto by reference.

127. Defendant's acts and practices are fraudulent in that they have deceived and/or are likely to deceive Plaintiffs and members of the consuming public, including the Class. Defendant sold Plaintiffs Washing Machines with Defective Parts that have rendered the Washing Machines essentially unusable for the purposes for which they were purchased.

128. Plaintiffs relied upon Defendant's unfair, unlawful, and fraudulent business acts and practices – the material omissions, and non-disclosures – to their detriment in that they would not have purchased the washers had they known of the true facts.

129. Plaintiffs have suffered injury in fact and have lost money as a result of Defendant's unfair competition in that they have overpaid for the Washing Machines, incurred expenses in attempting to repair the Washing Machines or remedy the Biofilm, Foul Odors and the Mold Problem, had their Clothes damaged, have paid Undisclosed Additional Operating Expenses and/or would not have bought the Washing Machines had Defendant not misrepresented and omitted disclosing that the Washing Machines have Defective Parts, are defective products in their integrated and finished and assembled state and are unable to effectively self-clean, that they have a high propensity to develop and/or accumulate Biofilm,

1 Foul Odors, and the Mold Problem, and that owners of the Machines will have to  
2 spend money for the Undisclosed Additional Operating Expenses.

3 130. The Consumer Representatives seek an order of this Court awarding  
4 restitution, injunctive relief and all other relief allowed under Section 17200, *et seq.*,  
5 plus interest, attorneys' fees, and costs.

6  
7 **SECOND CAUSE OF ACTION**

8 **Asserted On Behalf of the Nationwide Class, And Alternatively,**  
9 **On Behalf of the California Class**  
10 **(Violations of Cal. Bus. & Prof. Code § 17500 *et seq.*)**

11 131. The Consumer Representatives repeat and re-allege all prior paragraphs  
12 and incorporate them as if fully set forth herein.

13 132. Defendant is a "person" as defined by Cal. Bus. & Prof. Code § 17506.

14 133. Defendant falsely advertised the performance, uses, benefits,  
15 characteristics, quality, grade and standard of the Washing Machines by omission as  
16 alleged herein.

17 134. Defendant's omissions, as more fully described above, did deceive, and  
18 are likely to deceive Plaintiffs.

19 135. Plaintiffs relied upon these material misrepresentations and omissions  
20 to their detriment in that they would not have purchased the Washers had they  
21 known of the omitted true facts that Defendant did not disclose to them.

22 136. The above-described false and misleading advertising conducted by  
23 Defendant continues to this day and presents a threat to the general public in that  
24 Defendant has not acknowledged its wrongdoing to consumers or publicly issued an  
25 appropriate conspicuous notice to existing or prospective purchasers of its Washing  
26 Machines, and has not disclosed the presence of the Defective Parts in the Washing  
27 Machines that cause the development and accumulation of Biofilm, Foul Odors, the  
28 Mold Problem and Machine owners to pay Undisclosed Additional Operating  
Expenses, all of which resulted in Plaintiffs being deceived and misled.

138. Pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17535, the Consumer Representatives seek an order 1) requiring Defendant to immediately cease the unlawful, unfair, and/ or fraudulent business acts and/or practices and false and misleading advertising complained of herein; 2) enjoining Defendant from continuing to misrepresent the Washing Machines' uses, benefits, characteristics, standard, quality and grade by omitting from its labels, advertising and communications regarding the Washing Machines Defective Parts that the Defective Parts when incorporated and assembled into the integrated finished Washing Machine cause Biofilm, Foul Odors, the Mold Problem to develop and accumulate therein which in turn cause Clothes washed in them to emit offensive and obnoxious odors and their owners to pay Undisclosed Additional Operating Expenses; and 3) requiring Defendant to repair or replace the Washing Machines so that they do not develop or accumulate Biofilm, Foul Odors, the Mold Problem therein which in turn cause Clothes washed in them to emit offensive and obnoxious odors and their owners to pay Undisclosed Additional Operating Expenses; or provide full restitution to Consumer Representatives and Class members of all monies wrongfully acquired by means of such acts of unfair competition and false advertising, plus interest, costs, and attorneys' fees.

### THIRD CAUSE OF ACTION

**Asserted on Behalf of the Nationwide Class, and Alternatively,  
On Behalf of the California Class  
(Violations of the Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*)**

139. Consumer Representatives re-allege and incorporate the above  
allegations by reference as if fully set forth herein.

140. Consumer Representatives seek to recover for themselves and the  
Nationwide Class, or in the alternative, the California Class based on Defendant's



1 breach of the Consumer Legal Remedies Act ("CLRA"), California Civil Code §  
2 1750 *et seq.*

3 141. At all times relevant hereto, Plaintiffs were "consumer[s]" as that term  
4 is defined in Civ. Code § 1761(d).

5 142. At all times relevant hereto, the Machines constituted "goods" as that  
6 term is defined in Civ. Code § 1761(a).

7 143. At all times relevant hereto, Defendant constituted a "person" as that  
8 term is defined in Civ. Code § 1761(c).

9 144. At all times relevant hereto, Plaintiffs' purchases of Defendant's  
10 Bosch and Siemens brand 27" and 24" Horizontal Axis/Front-Loading Automatic  
11 Clothes Washers, including, but not limited to, Bosch Axxis, Nexxt, and Vision  
12 Models, and Siemens ultraSense and ultraStack models and replacement parts  
13 constituted a "transaction" as that term is defined in Civ. Code § 1761(e).

14 145. At all times relevant hereto, Defendant provided "services" to  
15 Plaintiffs within the meaning of Civ. Code § 1761(b).

16 146. The CLRA provides, in relevant part, that "[t]he following unfair  
17 methods of competition and unfair or deceptive acts or practices undertaken by any  
18 person in a transaction intended to result or which results in the sale or lease of  
19 goods or services to any consumer are unlawful: subsection (a)(5) [r]epresenting  
20 that goods . . . have . . . characteristics, uses, benefits . . . which they do not have; ...  
21 subsection (a)(7) [r]epresenting that goods ... are of a particular standard, quality or  
22 grade . . . if they are of another; ... and subsection (a)(9) [a]dvertising goods ... with  
23 intent not to sell them as advertised. Civil Code §§ 1770(a)(5),(7), and (9).

24 147. Defendant makes uniform written representations that the Washing  
25 Machines will make Clothes placed in them during a xxtrasanitary or sanitary  
26 cleaning cycle, sanitary and clean, which includes removing dirt, bad smells,  
27 deleterious organic material, necessarily including mold, mildew and bacteria, the  
28 Machines are "High Efficiency" provide "High Care" to the clothes placed in them

1 during a cleaning cycle: that ownership and use of the Machines will require less  
2 operation and use and require less energy to make Clothes placed in them during a  
3 wash cycle free of dirt, bad smell, deleterious organic material, necessarily  
4 including, mold, mildew, bacteria, Biofilm, the Mold Problem and Foul Odors and  
5 have other benefits, standards, and qualities as additionally stated above. Said  
6 statements are representations regarding the characteristics, uses, benefits,  
7 standards, and quality of the Washing Machines that are false, deceptive and/or  
8 misleading in violation of the CLRA.

9 148. Defendant misrepresents the characteristics, uses, and benefits of the  
10 Washing Machines by failing to disclose material facts which include; a) the  
11 Machines have the Defective Parts; b) that the Defective Parts cause Biofilm, the  
12 Foul Odors and the Mold Problem; c) Clothes placed in the Machines during a wash  
13 cycle will emit offensive and obnoxious odors; d) Machine owners will to undertake  
14 Extraordinary Actions (some of which create safety hazards, such as leaving the  
15 door ajar in a household with young children); e) the Machines when used as Bosch  
16 recommends are not Highly Efficient; f) the Machines do not provide High Care for  
17 Clothes placed in them and do not make Clothes placed them clean and free from  
18 deleterious organic material and the bad smells and that cause them to pay.

19 149. The information Defendant conceals and/or does not disclose to  
20 Plaintiffs are material facts in that a reasonable consumer would have considered  
21 them important in deciding whether to purchase, or whether to pay the stated price  
22 for, the Washing Machines and because Plaintiffs would have been aware of it and  
23 behaved differently by not buying the Washing Machines, not paying for repairs,  
24 and/or paying less for the Washing Machines.

25 150. The omission of the Material Facts, as alleged above, is contrary to  
26 representations actually made by Defendant, including but not limited to, that the  
27 Washing Machines "High Efficiency," "High Care," and "Energy-Star", and "High  
28

1 Care” and/or an omission of fact Defendant was obliged to disclose because: 1)  
2 Defendant had exclusive knowledge of the Material Facts not known to Plaintiffs  
3 and the Class, since only Defendant had exclusive access to the aggregate data from  
4 its retailers, its own tests, and complaints from its customers; 2) Defendant actively  
5 concealed and suppressed the Material Facts from Plaintiffs by not warning them  
6 that the Washing Machines had Defective Parts incorporated into them which cause  
7 the development and accumulation of Biofilm, the Foul Odors and the Mold  
8 Problem, Clothes placed in the Machines during a wash cycle to emit offensive and  
9 obnoxious odors, require their owners to undertake Extraordinary Actions (some of  
10 which create safety hazards, such as leaving the door ajar in a household with young  
11 children) and that require them to pay Undisclosed Additional Operating Expenses  
12 at the time of purchase; 3) by performing warranty and/or repair work that it knew  
13 would not repair and did not replace the Defective Parts such that they were no  
14 longer defective; 4) by recommending remedies to complaining consumers that it  
15 knew would not repair or replace the Defective Parts with non-defective parts or  
16 stop the presence of resulting problems thereby causing damages; 5) Defendant  
17 made partial representations such as recommending futile remedies like empty hot-  
18 water and bleach cycles, and wiping the door gasket dry after every wash, but also  
19 suppressed the Material Facts; and 6) the Material Facts relate to safety in that the  
20 Machines develop mold and deleterious organic matter which poses a risk of harm  
21 to Machine owners’ health and Bosch’s recommendation, only post sale, to  
22 consumers that the Washer door must be left “ajar” creates an admitted risk of injury  
23 and death to children present in households with Washing Machines.

24 151. Plaintiffs justifiably acted or relied to their detriment upon the  
25 undisclosed facts as evidenced by their purchase of the defective Washing  
26 Machines. Had Plaintiffs known of the Material Facts, they would not have  
27 purchased the Washing Machines, or would have paid less for them.

28





1 Exhibit "10"]. In addition, Defendant has received thousands of complaints and  
2 other notices from its customers throughout the United States advising it of Class  
3 members experiencing Biofilm, the Foul Odors and the Mold Problem and Clothes  
4 that emit offensive and obnoxious odors after being placed in a Washing Machine  
5 during a wash cycle.

6 158. Defendant received notice by the filing of the *Kleinman v. BSH Home*  
7 *Appliances, Corp.* State court action, filed on or about 7/13/2009, as well as the  
8 filing of the *Tait v. BSH Home Appliances, Corp.* and *Gibson v. BSH Home*  
9 *Appliances, Corp.* federal actions.

10 159. Plaintiffs gave Defendant a reasonable opportunity to conform the  
11 Washing Machines to its express warranties as alleged herein. Defendant failed to  
12 conform the Washing Machines to its express warranties. Therefore Bosch  
13 breached the express warranties.

14 160. As a direct and proximate result of Defendant's breach of express  
15 warranties, Plaintiffs have sustained damages and other losses in an amount to be  
16 determined at trial. Plaintiffs are entitled to recover damages, costs, attorneys' fees,  
17 rescission, and other relief as provided by statute or deemed appropriate by the  
18 Court.

19  
20 **FIFTH CAUSE OF ACTION**

21 **Asserted On Behalf of the California and New York Subclasses**  
22 **(Breach of Implied Warranty under NY UCC § 2-314 and Cal. Song-Beverly**  
23 **Act)**

24 161. Consumer Representatives Wentworth and Isabella re-allege and  
25 incorporate the above allegations by reference as if fully set forth herein.

26 162. Consumer Representatives Wentworth and Isabella, respectively, seek  
27 to recover for the Subclasses based on Defendant's breach of implied warranty  
28

1 under California's Song-Beverly Consumer Warranty Act and New York UCC §2-  
2 314)

3 163. Under California's Song-Beverly Consumer Warranty Act, Cal. Civ.  
4 Code § 1792 *et seq.*, every sale of consumer goods is accompanied by both a  
5 "manufacturer's and retailer's" implied warranty that the goods are merchantable  
6 within the meaning of Cal. Civ. Code § 1791.1(a). Therefore, California consumers  
7 need not be in privity with the manufacturer to bring an implied warranty claim.

8 164. New York recognizes the "thing of danger" exception to the privity  
9 requirement. The presence of mold and mildew in the Machines poses a threat to  
10 Plaintiffs' safety and to the safety of others. Additionally, Bosch has admitted that  
11 the Washing Machines pose an entrapment risk of injury and death to children when  
12 the door is left "ajar" per its own recommendations. In addition, Plaintiffs allege  
13 herein that the Mold Problem creates a safety issue with respect to user's and  
14 household members' health.

15 165. The Washing Machines are "consumer goods" within the meaning of  
16 Cal. Civ. Code § 1791(a).

17 166. Defendant is a "manufacturer" within the meaning of Cal. Civ. Code §§  
18 1791(j).

19 167. Plaintiff Wentworth bought her Washing Machine at retail in the State  
20 of California.

21 168. At the time of sale, and currently, Defendant is in the business of  
22 manufacturing and selling Washing Machines.

23 169. By operation of law, Defendant impliedly warranted to Plaintiffs that  
24 its Washing Machines were of merchantable quality and fit for the ordinary  
25 purposes for which they are used.

26 170. Defendant possessed actual superior knowledge that the Washing  
27 Machines' Defective Parts caused the development and accumulation of Biofilm,  
28

1 the Foul Odors, the Mold Problem; caused Clothes washed in them to emit offensive  
2 and noxious odors and Machine owners to pay Undisclosed Additional Operating  
3 Expenses and based on pre-market testing, complaints posted on the internet, and  
4 complaints made to Defendant's call center.

5 171. Defendant's waiver and/or limits on implied warranties are  
6 unconscionable, unenforceable, and/or illegal. Plaintiffs had no meaningful choice  
7 in determining those time limitations; the warranties were written by Defendant,  
8 without input of Plaintiffs; the Warranty overwhelmingly favors Defendant by  
9 unreasonably limiting the warranty to 2 years on a product that could reasonably be  
10 expected to last 10 or more years; a gross disparity in bargaining power existed as  
11 between Defendant and Class members; Defendant knew or should have known that  
12 its Washing Machines were defective at the time of sale and would accumulate  
13 Biofilm and develop the Foul Odors and the Mold Problem before the end of their  
14 useful lives, and Plaintiffs were unfairly surprised by the time limitation upon  
15 discovering that Bosch knew Washing Machines has the Mold Problem.

16 172. Defendant breached the implied warranty at the time of sale by selling  
17 defective Washing Machines. In the alternative, as to the California Class only,  
18 Plaintiffs' Washing Machine became unfit for their ordinary purpose of cleaning  
19 Clothes within the implied warranty period because they accumulated Biofilm,  
20 produced Foul Odors, developed the Mold Problem, and caused Clothes placed in  
21 them during a wash cycle to emit offensive and noxious odors.

22 173. Plaintiffs' Washing Machines do not pass without objection in the trade  
23 as they are sold as a premium product, but fail to clean Clothes.

24 174. Plaintiffs' Washing Machines became unfit for their ordinary purpose  
25 of cleaning Clothes.

1 175. Plaintiffs' Washing Machines were not adequately contained,  
2 packaged, or labeled as the labels "High Efficiency" and "High Care" "and Xxtra  
3 Sanitary" are inaccurate and misleading as alleged herein.

4 176. Plaintiff's and Class member's Washing Machines do not conform to  
5 the promises or affirmations of fact made on the labels including "High Efficiency"  
6 "High Care" and "Xxtra Sanitary" as Clothes washed inside the Machines are  
7 impregnated with mold and mildew.

8 177. Plaintiffs were the intended third-party beneficiaries of the implied  
9 warranty made by Defendant. Defendant knew that the retailers to whom it sold the  
10 Washing Machines were not going to own the Washing Machines any longer than it  
11 took to sell them to Plaintiffs. Bosch entered into a contract for the sale of all of its  
12 Machines to retailers. In particular, Bosch entered into contracts with all resellers  
13 of the Washing Machines, contract which included warranties, express and implied.  
14 Bosch and all resellers to which it sold the Washing Machines knew and understood  
15 that the resellers' purpose in purchasing Washing Machines was to sell them to  
16 consumers, and not operate or use them itself, and both Bosch and the resellers  
17 intended all consumers that purchased their Washing Machines from a reseller to be  
18 the beneficiaries of the implied and express warranties that existed because of  
19 Bosch's sale of Washing Machines to resellers. In the case of Consumer  
20 Representative Wentworth, Ms. Wentworth is the third party beneficiary of a  
21 contract for the sale of a Washing Machine from Bosch to Pacific Sales, Inc. In the  
22 case of Consumer Representative Isabella, Ms. Isabella is the third party beneficiary  
23 of the contract for sale of a Washing Machine from Bosch to Showcase Furniture.  
24 In the case of Consumer Representative Gibson, Ms. Gibson is the third party  
25 beneficiary of a contract for the sale of a Washing Machine from Bosch to US-  
26 Appliance.com. In the case of Consumer Representative Demereckis, Mr.  
27 Demereckis is the third party beneficiary of the contract for sale of a Washing  
28



1 Machine from Bosch to ABT Electronics & Appliances. Indeed, all Class members,  
2 either purchased their Machines directly from Bosch or were the intended third  
3 party beneficiaries of the contracts for sale of the Washing Machines from Bosch to  
4 retailers.

5 178. Further, Defendant intended that any warranties, whether express or  
6 implied, that applied to the Washing Machines were for the benefit of Plaintiffs.

7 179. Defendant knew Plaintiffs were, and intended that Plaintiffs be, the  
8 ultimate beneficiaries of Defendant's implied warranties as they are the owners of  
9 the Washing Machines.

10 180. Defendant, who manufactures and markets the Washing Machines,  
11 and/or sellers/resellers of the Washing Machines, knew that Plaintiffs were the end  
12 users of the Washing Machines when Defendant entered into any and all sales  
13 contracts and subcontracts for the Washing Machines and Defendant's intent to  
14 benefit Plaintiffs arises by operation of law pursuant to the "implied covenant of  
15 good faith and fair dealing" contained within any and all sales contracts and  
16 subcontracts for the Washing Machines entered into by Defendant.

17 181. Defendant brought itself into privity with Plaintiffs and class members  
18 by making representations to them through labels such as "High Efficiency" and  
19 "High Care" upon which they relied.

20 182. Defendant, in addition to and separate and apart from the foregoing  
21 created privity with the first using purchasers of the Washing Machines a unilateral  
22 contract of express warranty. By said action Bosch created contractual privity  
23 between itself and every first purchasing user.

24 183. As a proximate result of Defendant's breach of implied warranty,  
25 Plaintiffs have sustained damages and other losses in an amount to be determined at  
26 trial. Plaintiffs are entitled to recover damages and attorneys' fees, costs, rescission,  
27 and other relief as is as provided by statute or deemed appropriate by the Court.

**SIXTH CAUSE OF ACTION**

**Asserted On Behalf of the California and New York, Subclasses  
(Violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* –  
Breach of Implied Warranty of Merchantability)**

184. Consumer Representatives Wentworth and Isabella repeat and re-allege all prior paragraphs and incorporate them as if fully set forth herein.

185. The Washing Machines are “consumer products” as that term is defined under 15 U.S.C. § 2301(1).

186. Plaintiffs and Class members are “consumers” as that term is defined by 15 U.S.C. § 2301(3), and utilized the Machines for personal and household use and not for resale or commercial purposes.

187. Defendant is a “warrantor” and “supplier” as those terms are defined by 15 U.S.C. § 2301(4) and (5).

188. Defendant provided Plaintiffs with “implied warranties” as that term is defined by 15 U.S.C. § 2301(7).

189. In its capacity as a warrantor, and by the conduct described herein, any attempt by Defendant to limit the implied warranty of merchantability in a manner that would exclude coverage for the Defective Parts in the Washing Machines or the defective condition of the Washing Machines in their integrated assembled state is unconscionable and any such effort to disclaim, or otherwise limit, liability for its defective Washing Machines is null and void as alleged above.

190. This Court has jurisdiction over this cause of action under 28 U.S.C. 1332.

191. Defendant has failed to conform the Washing Machines to the implied warranty of merchantability.

192. Plaintiffs fulfilled their obligations under the warranties.

193. As a result of Defendant's breach of implied warranties, Plaintiffs are entitled to revoke their acceptance of the Washing Machines, obtain damages and equitable relief, and obtain attorneys' fees and costs pursuant to 15 U.S.C. § 2310.

## SEVENTH CAUSE OF ACTION

### **Asserted On Behalf Of The Illinois Subclass (Violation of the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/1 *et seq.*)**

194. Consumer Representative Demereckis repeats and re-alleges all prior paragraphs and incorporates them as if fully set forth herein.

195. The Illinois Consumer Fraud and Deceptive Trade Practices Act ("ICFA") prohibits "unfair and deceptive practices."

196. Consumer Representative Demereckis and members of the Illinois Subclass are consumers.

197. Consumer Representative Demereckis and members of the Illinois Subclass reasonably expected that their Washing Machines would not have the Defective Parts that caused their Washing Machines to develop and accumulate Biofilm and develop Foul Odors, the Mold Problem, damaged Clothes placed in the Washing Machines during a wash cycle and pay Undisclosed Additional Operating Expenses.

198. Defendant developed, manufactured, marketed and sold the Washing Machines. The Washing Machines are defective because they have Defective Parts that, which following normal operation and usage of the Washing Machines cause them to develop and accumulate Biofilm, develop Foul Odors and the Mold Problem, make Clothes inside of them during a wash cycle to emit offensive and noxious odors and Machine owners to incur Undisclosed Additional Operating Expenses.

1 199. Defendant's misconduct, including the omissions of Material Facts, as  
2 described above, took place in the course of trade or commerce in Illinois, and arose  
3 out of transactions that occurred at retail outlets in Illinois.

4 200. Defendant had knowledge of the Defect Parts at all relevant times as  
5 alleged above.

6 201. Despite Defendant's knowledge of the Defective Parts in the Washing  
7 Machines, and the Material Facts, Defendant has failed to disclose the existence of  
8 this material information to Consumer Representative Demereckis and members of  
9 the Illinois Subclass at the time each of them purchased the Washing Machines,  
10 and/or at the time they made a Warranty claim related to the Defective Parts,  
11 Biofilm, the Foul Odors, the Mold Problem or Clothes that smelled offensive or  
12 noxious following their presence in a Washing Machine during a wash cycle.

13 202. Defendant intended, and continues to intend, that Consumer  
14 Representative Demereckis and members of the Illinois Subclass rely on the  
15 omissions of Material Facts.

16 203. In failing to inform consumers of the Defective Parts, Defendant has  
17 engaged in an unfair or deceptive act prohibited by the ICFA.

18 204. If not for Defendant's deceptive and unfair acts of concealing from  
19 Plaintiffs the Material Facts as alleged herein, Plaintiffs would not have purchased  
20 the Washing Machines, or would have paid less for them. Defendant, at all relevant  
21 times knew or should have known that Plaintiffs did not know or could not have  
22 reasonably discovered the Defective Parts prior to their purchases.

23 205. Consumer Representative Demereckis and members of the Illinois  
24 Class relied on Defendant's omission of the Material Facts at the point of purchase  
25 on the Washing Machines' labels in retail stores where the Washing Machines are  
26 sold as alleged herein, and would not have purchased the Washing Machines had  
27 Defendant disclosed the Material Facts.

28



1       206. As a direct and proximate result of Defendant's violations of the ICFA,  
2 Plaintiffs suffered damages, in the form of, among other things, monies spent in  
3 attempting to repair the Washing Machines or remedy the Foul Odors and Mold  
4 Problems, and/or diminution in value of the Washing Machines.

5       207. The statute of limitations was tolled by Defendant's fraudulent  
6 concealment of the Defective Parts, the discovery rule, and/or the continuing  
7 violations rule.

8       208. Defendant's violation of the ICFA entitles Consumer Representative  
9 Demereckis and members of the Illinois Subclass to statutory and actual damages,  
10 punitive damages, injunctive relief, and attorney's fees and costs.

11  
12                                   **EIGHTH CAUSE OF ACTION**

13                           **Asserted On Behalf Of The Maryland Subclass**  
14                           **(Violation of the Maryland Consumer Protection Act,**  
15                           **Md. Code Ann., Com. Law § 13-101)**

16       209. Consumer Representative Beverly Gibson repeats and re-alleges all  
17 prior paragraphs and incorporates them as if fully set forth herein.

18       210. Consumer Representative Beverly Gibson and members of the  
19 Maryland Subclass are "consumers" and "persons" within the meaning of Md. Code  
20 Ann., Com. Law § 13-101(c) and (h); Defendant is a "merchant" within the meaning  
21 of Md. Code Ann., Com. Law § 13-101(f).

22       211. The Washing Machines are "consumer goods" and "merchandise"  
23 within the meaning of Md. Code Ann., Com. Law § 13-101(d) and (f).

24       212. The Maryland Consumer Protection Act proscribes any "[f]alse, falsely  
25 disparaging, or misleading oral or written statement, visual description, or other  
26 representation of any kind which has the capacity, tendency, or effect of deceiving  
27 or misleading consumers" in connection with the sale of consumer goods. Md. Code  
28 Ann., Com. Law § 13-301(1);

1           213. The Maryland Consumer Protection Act also proscribes “any  
2 representation that... [c]onsumer goods, consumer realty, or consumer services have  
3 a sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or  
4 quantity which they do not have”; and “[c]onsumer goods, consumer realty, or  
5 consumer services are of a particular standard, quality, grade, style, or model which  
6 they are not.” Md. Code Ann., Com. Law § 13-301(2)(i) and (2)(iv).

7           214. The Maryland Consumer Protection Act also proscribes as unfair and  
8 deceptive trade practices: “[f]ailure to state a material fact if the failure deceives or  
9 tends to deceive; [a]dvertisement or offer of consumer goods... [w]ithout intent to  
10 sell... them as advertised or offered; [k]nowingly false statement that a service,  
11 replacement, or repair is needed; [d]eception, fraud, false pretense, false premise,  
12 misrepresentation, or knowing concealment, suppression, or omission of any  
13 material fact with the intent that a consumer rely on the same in connection with ...  
14 [t]he promotion or sale of any consumer goods, consumer realty, or consumer  
15 service... or [t]he subsequent performance of a merchant with respect to an  
16 agreement of sale. Md. Code Ann., Com. Law § 13-301(3), (5)(1), (7), (9)(i) and  
17 (9)(iii).

18           215. Defendant falsely represented material facts regarding the Machines  
19 which misled Ms. Gibson and members of the Maryland Subclass as more fully  
20 alleged herein.

21           216. Defendant misrepresented the characteristics, uses, benefits, standard,  
22 quality, and grade of the Machines as alleged herein.

23           217. Defendant failed to disclose on labels attached to the Washing  
24 Machines that Ms. Gibson observed at the point of sale Material Facts regarding the  
25 Washing Machines and that owners would be required to take Extraordinary  
26 Actions and to pay Undisclosed Additional Operating Expenses.

27           218. Defendant advertised the Machines without the intent to sell them as  
28 advertised as alleged herein.

1           219. Defendant deceived Ms. Gibson and members of the Maryland  
2 Subclass by misrepresenting and/or omitting material facts in connection with the  
3 sale of the Washing Machines as alleged herein in violation of Md. Code Ann.,  
4 Com. Law § 13-301(9)(i). Defendant also violated Md. Code Ann., Com. Law §  
5 13-301(9)(iii) by falsely representing by omission to Ms. Gibson and Maryland  
6 Subclass members that the Washing Machines were not defective, recommending  
7 futile Extraordinary Actions, and advising replacement and repairs, such as new  
8 door gaskets, that Bosch knew would not repair the Defective Parts or replace the  
9 Defective Parts with non-defective parts, which would result in the Washing  
10 Machines not developing or accumulating Biofilm, the Mold Problem, Foul Odors  
11 and not making Clothes present in them during a wash cycle have noxious and  
12 offensive odors. Defendant knew of the falsity of its omissions and intended to  
13 induce reliance by Ms. Gibson and members of the Maryland Subclass as alleged  
14 herein.

15           220. Consumer Representative Gibson and Maryland Class members relied  
16 on Defendant's Omissions of Material Fact on the labels attached to the Washing  
17 Machines at the point of purchase in retail stores where they purchased the Washing  
18 Machines in that they would not have purchased the Washing Machines had Bosch  
19 disclosed to them Material Facts through labels on the Machines.

20           221. As a result of Defendant's conduct, Consumer Representative Gibson  
21 and members of the Maryland Subclass did not receive the benefit of the bargain  
22 because they overpaid for the Machines.

23           222. As a result of Defendant's conduct, Consumer Representative Gibson  
24 and members of the Maryland Subclass lost money through the diminution in value  
25 of their Machines, as well as money spent on Undisclosed Additional Operating  
26 Expenses and replacement parts  
27  
28

223. Consumer Representative Gibson and members of the Maryland Subclass seek restitutionary and injunctive relief, as well as damages, costs and attorneys fees.

#### **NINTH CAUSE OF ACTION**

##### **Asserted on Behalf of the New York Subclass (Violations of § 349 of New York General Business Law: Deceptive Acts and Practices)**

224. Consumer Representative Trish Isabella repeats and realleges all prior paragraphs and incorporates them as if fully set forth herein.

225. NY GBL § 349 makes unlawful any deceptive act or practice, including false advertising, in the conduct of any trade or commerce or in the furnishing of any service in New York.

226. Ms. Isabella purchased her Washing Machine in New York and brings this action pursuant to NY GBL § 349 on behalf of herself and all members of the New York Subclass. Ms. Isabella and members of the New York Subclass are consumers.

227. Defendant has engaged in deceptive practices through omissions of the presence of Defective Parts in the assembled Washing Machines Defendant sold and the Material Facts directed at Ms. Isabella and members of the New York Subclass, as more fully described above, in connection with the sale of Washing Machines that have Defective Parts that cause the Washing Machines to develop and accumulate Biofilm, the Mold Problem and emit Foul Odors, cause Clothes present in them during a wash cycle to emit offensive and noxious odors and cause their owners to pay Undisclosed Additional Operating Expenses. Defendant's omissions are likely to mislead and did materially mislead Ms. Isabella and other reasonable consumers by causing them to purchase the Washing Machines and to pay for Undisclosed Additional Operating Expenses that they would not have paid for (or would have paid less for their Washing Machine), but for Defendant's omissions.



1           228. Defendant made numerous omissions of the Material Facts and  
2 presence of the Defective Parts in its printed labels placed on the Washing  
3 Machines and which Ms. Isabella and members of the New York Subclass saw and  
4 relied on to their detriment. Consumer Representative Isabella and New York Class  
5 members relied on Defendant's Omissions of the presence of the Defective Parts in  
6 the Washing Machines and Material Facts on the labels attached to the Washing  
7 Machines at the point of purchase in retail stores where they purchased the Washing  
8 Machines in that they would not have purchased the Washing Machines had Bosch  
9 disclosed to them that the Machines had present in them Defective Parts and the  
10 Material Facts stating those facts on the labels present on the Machines at New  
11 York resellers premises.

12           229. The unfair and deceptive trade practices have directly, foreseeably, and  
13 proximately caused damages and injury to Ms. Isabella and members of the New  
14 York Subclass. Consumer Representative Isabella and New York Subclass  
15 members have lost money in that they would not have purchased the Washing  
16 Machines or would have paid less for them. Consumer Representative Isabella seeks  
17 to enjoin Defendant's deceptive conduct, as well as damages and attorneys' fees,  
18 and all other relief available under NY GBL § 349.

19  
20                                   **TENTH CAUSE OF ACTION**

21                                   **Asserted on Behalf of the New York Subclass**  
22                                   **(Violations of § 350 of New York General Business Law: False Advertising**  
23                                   **Unlawful)**

24           230. Consumer Representative Trish Isabella repeats and realleges all prior  
25 paragraphs and incorporates them as if fully set forth herein.

26           231. NY GBL § 350 makes false advertising unlawful.

27           232. Defendant's advertising of the Washing Machines, as alleged in more  
28 detail herein, is and was false within the meaning of NY GBL § 350-a(1).

1        233. Consumer Representative Isabella and New York Subclass members  
2 were materially misled by Defendant's advertising.

3        234. Consumer Representative Isabella and New York Class members relied  
4 on Defendant's Omissions of Material Facts on the labels attached to the Washing  
5 Machines at the point of purchase in retail stores where they purchased the Washing  
6 Machines in that they would not have purchased the Washing Machines had Bosch  
7 disclosed to them Material Facts through labels on the Machines.

8        235. As a direct and proximate result of Defendant's false advertising, Ms.  
9 Isabella and New York Subclass members lost money in that they would not have  
10 purchased the Washing Machines or would have paid less for them.

11        236. Consumer Representative Isabella seeks to enjoin Defendant's  
12 deceptive conduct, as well as damages and attorneys' fees, and all other relief  
13 available under NY GBL § 350.

14  
15                                    **PRAYER FOR RELIEF**

16        WHEREFORE, Plaintiffs pray for judgment against the Defendant for the  
17 following:

18        1. An order certifying a Nationwide Class, as well as California, Illinois,  
19 Maryland, and New York, Subclasses, and appointing Beverly Gibson, Trish  
20 Isabella, Nancy Wentworth and Dennis Demereckis as representative plaintiffs and  
21 their undersigned counsel to be class counsel for the Nationwide Class and  
22 Subclasses;

23        2. A constructive trust on, and restitution, of all amounts obtained by  
24 Defendant as a result of its misconduct, together with interest thereon from the date  
25 of payment, to the victims of such violations;

26        3. All recoverable compensatory and other damages sustained by  
27 Plaintiffs;

1 4. Actual and/or statutory damages for injuries suffered by Plaintiffs in  
2 the maximum amount permitted by applicable law;

3 5. An order (1) enjoining Defendant's wrongful, unfair, unlawful,  
4 fraudulent, and deceptive conduct as set forth above; (2) ordering Defendant to  
5 engage in a corrective notice campaign; and (3) requiring Defendant to refund to  
6 Plaintiffs the funds paid to Defendant for the defective Washing Machines;

7 6. Statutory pre-judgment and post-judgment interest on any amounts;

8 7. Payment of reasonable attorneys' fees and costs as may be allowable  
9 under applicable law; and

10 8. Such other relief as the Court may deem just and proper.

11 The Consumer Representatives, individually and on behalf of all similarly  
12 situated persons, hereby demand a trial by jury on all issues so triable.

13  
14 DATED: Sept. 10, 2013

**EPPSTEINER & FIORICA  
ATTORNEYS, LLP**

16  
17   
18

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21 Fax: (858) 350-1501

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23 (518) 434-1718

24 *Counsel for Plaintiffs and the Class*  
25  
26  
27  
28



# EXHIBIT 1

**EPPSTEINER & FIORICA ATTORNEYS, LLP**

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ajk@eppsteiner.com

Counsel for Plaintiffs and the Class

**IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

DIANA TAIT and NANCY WENTWORTH,  
individually and on behalf of all others similarly  
situated,

**PLAINTIFFS,**

vs.

BSH HOME APPLIANCES CORPORATION,  
a Delaware Corporation,

**DEFENDANT.**

CASE NO.:

**DECLARATION OF NANCY  
WENTWORTH**

[Jury Trial Demanded]

I, Nancy Wentworth, declare as follows:

1. I am a named plaintiff in this litigation.
2. I have personal knowledge of the matters set forth below except to those matters stated herein which are based on information and belief, which matters I believe to be true.
3. If called as a witness I could and would competently testify to the matters included herein.
4. I am informed and believe that venue is proper in this Court under Civil Code § 1780(d) based on the fact that BSH Home Appliances Corporation resides in, does substantial business in, and has its principal place of business in Orange County, which is located in this District.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this declaration was executed on April 29, 2010 in San Diego, California.

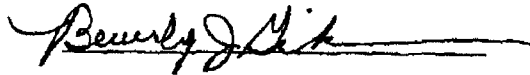
By: Nancy Wentworth  
Nancy Wentworth

AFFIDAVIT OF BEVERLY GIBSON

I, BEVERLY GIBSON, submit this affidavit pursuant to §1780(d) of the CAL. CIV. CODE, Consumers Legal Remedies Act, and declare the following:

1. I am named plaintiff in this litigation.
2. If called as a witness I could and would competently testify to the matters included herein.
3. I am informed and believe that the Defendant in this action resides in, conducts substantial business activity in, and has its principal place of business in Orange County, which is located in this District, and therefore this District is a proper place for trial of this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14 day of October 2010, in ABERDEEN Maryland.



BEVERLY GIBSON



**AFFIDAVIT OF SHARON COBB**

I, SHARON COBB, submit this affidavit pursuant to §1780(d) of the CAL. CIV. CODE, Consumers Legal Remedies Act, and declare the following:

1. I am named plaintiff in this litigation.
2. If called as a witness I could and would competently testify to the matters included herein.
3. I am informed and believe that the Defendant in this action resides in, conducts substantial business activity in, and has its principal place of business in Orange County, which is located in this District, and therefore this District is a proper place for trial of this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14 day of October 2010, in 2010, Tennessee.

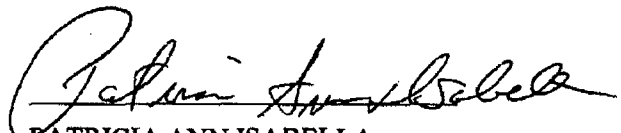
Sharon Cobb  
SHARON COBB

**AFFIDAVIT OF PATRICIA ANN ISABELLA**

I, PATRICIA ANN ISABELLA, submit this affidavit pursuant to §1780(d) of the CAL. CIV. CODE, Consumers Legal Remedies Act, and declare the following:

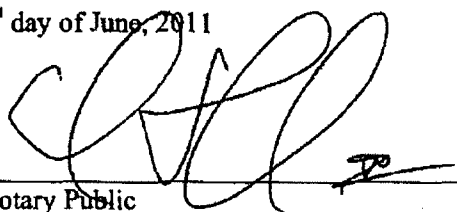
1. I am named plaintiff in this litigation.
2. If called as a witness I could and would competently testify to the matters included herein.
3. I am informed and believe that Defendant in this action resides in, conducts substantial business activity in, and has principal place of business in Orange County, which is located in this District, and therefore this District is a proper place for trial of this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 1<sup>st</sup> day of June, 2011, in Johnstown, New York.

  
PATRICIA ANN ISABELLA

Sworn to Before this

1<sup>st</sup> day of June, 2011

  
Notary Public

ELMER ROBERT KEACH, III  
Notary Public - State of New York  
No. 02KE6197061  
Qualified in Montgomery County  
Commission Expires 11/24/2013

Exhibit 1, Page 5

Jun 02 11 04:40p

Tait

1-708-452-7671

p.1

**AFFIDAVIT OF DIANA TAIT**

I, DIANA TAIT, submit this affidavit pursuant to § 1780(d) of the CAL. CIV. CODE, Consumers Legal Remedies Act, and declare the following:

1. I am a named plaintiff in this litigation.
2. If called as a witness I could and would competently testify to the matters included herein.
3. I am informed and believe that the Defendant in this action resides in, conducts substantial business activity in, and has its principal place of business in Orange County, which is located in this District, and therefore this District is a proper place for trial of this action.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed this 2 day of June 2011 in Norridge, IL.

  
\_\_\_\_\_  
DIANA TAIT

## EXHIBIT 2

Serial No: 8511 40060

Model No.: WFMC6400

Manufacture Date: Nov-05

Customer State: CA

Customer Inquiry Date: Dec-09

Notes:  
MOLD GROWING ON DOOR SEAL

Service Notes:



Serial No: 8507 9013771

Model No.: WFMC2100

Manufacture Date: Jul-05

Customer State: CA

Customer Inquiry Date: Nov-07

Notes:

01/15/08 12-3PM PLEASE TAKE # 491676 X1, 446476 X1, 422175 X4, // UNIT FACIA IS CRACKED AND DOOR BOOT MOLDED, COVERING PARTS AND LABOR. (REPEAT ISSUE)  
COVERING PARTS AND LABOR.

Service Notes:

REPLACED FACIA AND ACCESS COVER..

Serial No: 8709 857090084493016383

Model No.: WFMC1001

Manufacture Date: Sep-07

Customer State: CA

Customer Inquiry Date: Nov-08

Notes:  
MOLD IN GASKET,

Service Notes:  
CB REMOVED AND REPLACED BELLOW PER BSH CB

Serial No: 8710 900990

Model No.: WFMC8401

Manufacture Date: Oct-07

Customer State: CA

Customer Inquiry Date: Dec-09

Notes:

CUST CALLED BACK AND I GOT THE CALL AGAIN, CUST SAYS HIS PHONE DISCONNECTED THE CALL. CUST SAYS THE PURCHASE DATE IS JAN 14 2008. THE ISSUE W/ THE UNIT IS THAT THERE IS MOLD GROWING ON THE BOOT GASKET AREA AND CUST SAYS THIS SHOULD BE COVERED UNDER WARRANTY. THE UNIT IS ALMOST 2 YRS OLD AND I INFORMED CUST THE PARTS ONLY ARE STILL COVERED. CUST SAYS HE WANTS THIS REPL. I INFORMED CUST HE NEEDS TO CALL SVCR J & M AND HAVE THEM COME OUT TO DIAG ISSUE AND INFORM IF IT'S REPAIRABLE OR NOT. EXPLAINED TO MR THAT MOLD IS AN ENVIRONMENTAL ISSUE AND NOT A MALFUNCTION OF THE UNIT. EXPLAINED TO MR HE SHOULD BE LEAVING DOOR OPEN AFTER EACH USE TO HELP AIR CIRCULATION, AND ALSO WIPING UP ANY MOISURE LEFT INSIDE THE UNIT AFTER FINISHED USING, AND THIS SHOULD BE DONE DAILY AFTER EACH USE. CUST WILL CALL SVCR

Service Notes:

Serial No: 8607 900338

Model No.: WPMC2201

Manufacture Date: Jul-06

Customer State: CA

Customer Inquiry Date: Nov-07

Notes:

MILDEW/MOULD INSIDE SEAL DOOR LINER...ESA IS COVERING  
PARTS AND LABOR.

MILDEW/MOULD INSIDE SEAL DOOR LINER  
MOLD ON BOOT SEALAND DOOR

MILDEW/MOULD INSIDE SEAL DOOR LINER & DOOR  
ITSELF...ESA IS COVERING PARTS AND LABOR

Service Notes:

REPLACED DOOR KIT AND BOOT KIT PER TECH LINE TEST OP  
GOOD

Serial No: 8601 900251

Model No.: WFMC2100

Manufacture Date: Jan-06

Customer State: CA

Customer Inquiry Date: Mar-07

Notes:

BLACK MOLD ALL OVER DOOR BOOT

Service Notes:

REMOVED FRONT ASSM AND OLD BOOT REPLACED BOOT  
ADVISED CUSTOMER TO LEAVE DOOR AJAR



Serial No: 8706 857060084486008257

Model No.: WFMC4301

Manufacture Date: Jun-07

Customer State: CA

Customer Inquiry Date: Jul-08

Notes:

UNIT HAS MILDEW SMELL... UNIT NOT BRINGING IN ENOUGH  
WATER .... IN WARRANTY

Service Notes:

NO PROBLEMS FOUND, UNIT OK

Serial No: 8809 900108

Model No.: WFMC5301

Manufacture Date: Sep-08

Customer State: CA

Customer Inquiry Date: Aug-09

Notes:

UNIT HAS A REAL BAD ORDER OF MOLD SOFTNER DISPENCER  
HAS WATER IN IT CLOTHES ARE NOT COMING OUT  
CLEAN...WATER NOT DRAINING RUBBER LINERS WATER JUST  
SETTING THERE ...WARRANTY PLEASE CALL CUSTOMER 30  
MINS BEFORE ARRIVING ...--P.P.-667487

Service Notes:

CYCLED UNIT TO CHECK OPERATION AND ADVISED  
CUSTOMER.UNIT IS OPERATING PROPERLY.

Serial No: 8810 00246

Model No.: WFMC5301

Manufacture Date: Oct-08

Customer State: CA

Customer Inquiry Date: Oct-09

Notes:

UNIT LEAVING MUSKY ODOR ON CLOTHING / ADVISED SOAP  
AMOUNT/ GASKET IS ADVISED MILDEWY/ DOOR IS ALSO  
HAVING DIFFICULTY CLOSING AND OPENING---P.P.-667487

Service Notes:

NO PROBLEM FOUND, TESTED OK. PLEASE CLOSE RIS.

Serial No: 8511 900886

Model No.: WPMC6400

Manufacture Date: Nov-05

Customer State: CA

Customer Inquiry Date: Jan-07

Notes:

THE CLOTHES COME OUT SMELLING LIKE MILDEW

Service Notes:

FOUND CUSTOMER NOT USING DETERGENT CAUSING TO OVER  
SUDS AND TO MAKE UNIT NOT TO SPIN AND DRAIN PROPERLY  
CAUSING ODOR ON CLOTH

Serial No: 8805 902895

Model No.: WPMC5301

Manufacture Date: May-08

Customer State: CA

Customer Inquiry Date: Sep-09

Notes:

UNIT SMELLING LIKE MOLD CUSTOMER FOLLOWS ALL  
TROUBLESHOOT  
BAD MILDEW ODOR COMING FROM WASHER INTERIOR.

Service Notes:

REPLACED BOOT GASKET AND EDUCATED CUSTOMER ON  
WHAT CAN BE DONE TO PREVENT ODOR PROBLEM



Serial No: 8705 857050084485065346

Model No.: WFMC3301

Manufacture Date: May-07

Customer State: CA

Customer Inquiry Date: Apr-09

Notes:

CUSTOMER ADVISING THAT SHE CLEANS GASKET AND LEAVES  
DOOR OPEN AFTER EVERY USE AND OCCASIONALLY POURS  
ONE CUP OF BLEACH TO CLEAN THE MACHINE. STILL SMELLS  
OF MOLD AND SHE HAS A SINUS CONDITION AND HAS BEEN ILL  
JANUARY, FEBRUARY OF THIS YEAR AND NOW AGAIN AND  
BELIEVES IT'S A RESULT OF THE UNIT. WANTS A DEALER  
CREDIT FOR THE RETURN OF THE MACHINE IN TRADE FOR A  
TOP LOADER.

MOLDY SMELL

BSH AUTHO COVERING P&L PER [REDACTED]. AUTHO#1604403 UNIT  
HAS MOLD.

Service Notes:

FOUND MOLD ON INSIDE OF TUB BOOT ON WASHER. REPLACED  
TUB BOOT IN WASHER. CHECKED OPERATION OF UNIT. CHECKS  
OK. \*NOTIFIED CUSTOMER ABOUT CLOSING THE DOOR FIRMLY.

Serial No: 8712 900078

Model No.: WFMC8401

Manufacture Date: Dec-07

Customer State: CA

Customer Inquiry Date: Aug-09

Notes:

THE RUBBER GASKET IS MOLDY, CUST STATING SHE LEAVES  
DOOR CRACKED OPEN FOR AIR CIRCULATION, AND HAS TRIED  
REMEDIES WE PROVIDE AND ITS NOT HELPING - IW P&L---P.P.-

667487

IW PER CS.

Service Notes:

INSTALLED NEW GASKET

Serial No: 8704 900533

Model No.: WPMC3301

Manufacture Date: Apr-07

Customer State: CA

Customer Inquiry Date: Nov-09

Notes:

CUST STATING THERE IS A HORRIBLE ODOR IN THE UNIT AND ITS MAKING CLOTHES SMELL WORSE THAN BEFORE THEY WERE PLACED INSIDE WASHER. CUST ALSO COMPLAINS OF MOLD ON GASKET AND I DID ADVISE CUST THAT MOLD IS AN ENVIRONMENTAL ISSUE AND CUST DID ADVISE SHE WAS ALREADY INSTRUCTED ON BLEACH BATH AND CORRECT USAGE OF SOAP AND SHE HAS BEEN GOING BY WHAT WE RECOMMENDED AND SHE IS STILL SEEING MOLD AND NOW HER CLOTHES SMELL. CUST STATES THIS IS THE WORSE WASHER SHE'S SPENT HER MONEY ON AND WENT ONLINE AND SAW THAT THERE WERE MANY REVIEWS ONLINE FROM BOSCH CUSTOMERS THAT FEEL THE SAME WAY ABOUT THE WASHER. CUST STATES SHE DOES NOT WANT TO PAY FOR SVC AND IT'S NOT FAIR TO HER B/C SHE STATES SHE KEPT CALLING ABOUT THIS AND NOW SHE'S OUT OF WARRANTY.

Service Notes:

Best regards,  
Mami Hale

BSH Home Appliances Corporation  
Corporate Communications Manager

5551 McFadden Avenue  
Huntington Beach, CA 92649  
Phone (714) 899 3560

mami.hale@bshg.com

www.bosch-home.com/us www.thermador.com www.gaggenau.com  
Twitter: @boschappliances, @thermadorhome, @pmmarnihale

---

From: [REDACTED]  
Sent: Sunday, August 23, 2009 2:00 PM  
To: marni.hale@shg.com; john.farley@bshg.com; Silverman, Roberta  
Subject: Seeking Your Help concerning my Malodorous Bosch Washer

I purchased a Bosch Washer and Dryer (separately) from P.C. Richards in Carle Place New York. I was made to understand that this was the best I could buy.

I purchased the Washer Model WFMC3200UC/O1 in May 2005 for \$949.97. I also purchased a ten year warranty on the machine for \$249.99.

In October 2006 I called for service when the machine would not open or spin and had an unpleasant odor. The serviceman said he did not have time to wait for a wash cycle to run. He advised that I spray the interior with vinegar and keep the door open.

In August 2007 I called again with the same complaints. This time the serviceman acknowledged in writing on the invoice sheet he left me, that the washer did have an odor.

And so it goes on, I call they give me excuses. The machine is now growing mold and smelling worse than ever. I have been having rashes and lesions and am concerned that they are caused by the machine. Bosch finally told me that my warranty with them was only two years and had expired. I should deal with P C Richards. P.C. Richards tells me to call the service center, and they come and do nothing.

In December 2008 and in March 2009 Mike the Manager at P.C.Richards told me once again to call the Service Center and ask for a supervisor. The telephone operator advised me that Mike should not have told me to seek a supervisor. Any one could deal with my problem. They scheduled me a visit and the serviceman came. He saw the mold growing in the washer and said he would order me a new gasket. As of today, four to five months later, I have heard nothing further. Now I am hardly using the appliance because I must disinfect it before washing my clothes in it.

Over the four years of owning the washer I have not had any resolution from Bosch or from PC Richards. I bought what was held out to me as a top of the line appliance, and have not had any satisfaction from it. Even with a ten year warranty I seem to be getting nowhere. This is my last effort before I turn the matter over to Nassau County Office of Consumer Affairs. I am appealing for your help. I

Exhibit 2, Page 15

[REDACTED] Frustrated Consumer.



for the growth of mold. Mold needs an organic source of food. People might be confused as mold can grow on glass, tile, stainless steel, cookware, etc.; but it is generally feeding off of some organic source deposited on this material (oils, film, dirt, skin cells, etc.).

Fungus reproduces spores that come in many different sizes, shapes and colors. The spores will reproduce and germinate into new mold growth which in turn can produce millions of more spores. Molds are most prevalent from spring through late fall, but, in different climates, molds thrive all year and can cause year-round problems. Molds can be found wherever there is moisture, oxygen, and something to feed on.

#### The Bosch/Siemens Washer

Our washers in all the "wet" areas are built from plastics and stainless steel. These items do nothing to encourage the growth of mold.

Our washers also have built in heaters and different molds are killed at different heat levels.

More importantly higher temperature washes help remove the organic materials (food) that is needed for mold growth.

Our newer Care & Use manuals have a "cleaning procedure" for the washer that includes a high temp wash and bleach to remove organic materials.

The majority of customers use a wide range of wash temperatures (Cold, Warm, & Hot) during the normal use of their washer. This helps keep any organic materials from attaching themselves to the tubs. However if a customer only uses a cold wash for all loads this could allow for the build up of organics in any washer. In these cases we recommend that the unit should have a Sanitize Wash with bleach approximately every 26 loads or once a month.

#### The "Maytag Story"

Maytag had a class action suit against them several years ago that has since been settled regarding a design issue of their FL washer that allowed organic materials to be trapped in an area that would not flush out with normal use of the product.

Their units have since gone through several redesigns in the past few years and this is no longer an issue for them.

I hope this answers your questions and I hope you don't mind that I included a few others in my response back to you as it was an excellent opportunity to give this information to everyone.

Mark Bledsoe . Technical Services Manager

BSH Home Appliances Corporation

5551 McFadden Ave. Huntington Beach, CA 92649

Phone: 800-701-6691 ext.3522 Fax:714-845-2784

mark.bledsoe@bshg.com

www.boschappliances.com, www.thermador.com, www.gaggenau-usa.com, www.siemens-home.com

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From: [REDACTED]  
Sent: Thursday, September 08, 2005 6:17 AM

Exhibit 2, Page 17

CONFIDENTIAL-BSH004264

To: Bledsoe, Mark  
Cc: Gonzalez, Martha; Martinez, Rafael  
Subject: Mold/Mildew in Washers

Hello, Mark - Is there any kind of "official" statement regarding the build-up of mold/mildew in our washers??

People are extremely sensitive to mold issues and I get call after call regarding this. Of course, we advise the customers on the care of their units - drying out the boot and leaving the door open after their wash day, but they always refer back to the care and use guide they received with the unit - NOT advising this.

I got the "Maytag" story yesterday about a class action suit regarding mold in their washers - I'm not educated enough about "mold" in general to advise customers on the health issues of this type of mold/mildew.

Can you address this??

Thanks ~ [REDACTED]

## EXHIBIT 3

WPMC8440UC Bosch Nexxt 800 Series Front Load Washer with Aquas... <http://web.archive.org/web/20090201022409/http://www.us-appliance.com/>

Wayback Machine

http://www.us-appliance.com/wmc8440uc.html

Go

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MAR

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6 captures

5 Dec 08 - 28 May 09

2008

2010

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Exhibit 3, Page 1

WFCM8440UC Bosch Nexxt 800 Series Front Load Washer with Aquas... <http://web.archive.org/web/20081205124221/http://www.us-appliance.com>

## REFRIGERATION

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Freezers  
SHOP BY BRAND

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## WFCM8440UC Bosch Nexxt 800 Series Front Load Washer with Aquastop - Silver and White

Code: WFCM8440UC

Regular price: **\$1,549.00**

Safe price: **\$1,399.00**

You Save: **\$150.00**



Get a free Bosch dishwasher when you purchase a Bosch Appliance Package  
[Details with Range](#) [Details with Oven](#) (Expires Dec 31, 2008.)

### FEATURES MORE INFO WARRANTY REVIEWS

#### Performance

- XXTRASANITARY™ Cycle
- KIDSCARE™ Cycle
- Jeans Cycle
- AQUAGUARD™ Cycle
- Comforter Cycle
- [Performance Details and Photos](#)

#### Efficiency

- ECOACTION™
- ENERGY STAR® Qualified
- 1,200 rpm Spin Speed
- [Efficiency Details and Photos](#)

#### Quietness

- 54dB - Silence Rating
- Quietest Washer in U.S.
- Nearly Silent Wash System
- [Quietness Details and Photos](#)

#### Capacity

- 4.2 Cubic Foot Large Capacity Washer

#### Washer Safety

- AQUASTOP® Leak Protection
- [Safety Details and Photos](#)

#### Gentle Care

Exhibit 3, Page 2

WPMC8440UC Bosch Nexxt 800 Series Front Load Washer with Aquas... <http://web.archive.org/web/20081205124221/http://www.us-appliance.c>

- SENSOTRONIC® PLUS
- ARCHIE® Paddles
- Internal Water Heater
- Gentle Care® Detergent and Photos

use  
help

**Approximate Overall Dimensions:**

Height 36 15/16"  
Width 27"  
Depth 31 9/16"

Before install, consult installation instructions packed with product/kit for current dimensions.

SHARE

**More Bosch Washers**

- WPMC8440UC Bosch Nexxt 800 Series Front Load Washer with Aquastop - Silver and White
  - WPMC8401UC Bosch Nexxt 800 Series Front Load Washer - Silver and White
  - WPMC8400UC Bosch Nexxt 800 Series Front Load Washer - White
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Exhibit 3, Page 3



WPMC8440UC Bosch Nexxi 800 Series Front Load Washer with Aquas... <http://web.archive.org/web/20081205124221/http://www.us-appliance.com>

INTERNET ARCHIVE

Wayback Machine

<http://www.us-appliance.com/wfmc8440uc.html>

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Exhibit 3, Page 4

WFC8440UC Bosch Nexxt 800 Series Front Load Washer with Aquastop... <http://web.archive.org/web/20090201022409/http://www.us-appliance.com>

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Home > Laundry > Bosch Laundry > Bosch Washers > WFC8440UC Bosch Nexxt 800 Series Front Load Washer with Aquastop - Silver and White

## WFC8440UC Bosch Nexxt 800 Series Front Load Washer with Aquastop - Silver and White

Code: WFC8440UC

Regular price: **\$1,399.00**

Sale price: **\$1,329.00**

You Save: **\$70.00**



Get a free Bosch dishwasher when you purchase a Bosch Appliance Package  
[Details with Range](#) [Details with Oven](#) (Expires Feb 28, 2009.)

### FEATURES MORE INFO WARRANTY REVIEWS

#### Performance

- XXTRASANITARY™ Cycle
- KIDSCARE™ Cycle
- Jeans Cycle
- AQUAGUARD™ Cycle
- Comforter Cycle
- [Performance Details and Photos](#)

#### Efficiency

- ECOACTION™
- ENERGY STAR® Qualified
- 1,200 rpm Spin Speed
- [Efficiency Details and Photos](#)

#### Quietness

- 54dB - Silence Rating
- Quietest Washer in U.S.
- Nearly Silent Wash System
- [Quietness Details and Photos](#)

#### Capacity

- 4.2 Cubic Foot Large Capacity Washer

#### Washer Safety

- AQUASTOP® Leak Protection
- [Safety Details and Photos](#)

#### Gentle Care

Exhibit 3, Page 5

WFM8440UC Bosch Nexxt 800 Series Front Load Washer with Aquas... <http://web.archive.org/web/20090201022409/http://www.us-appliance.c>

- SENSOTRONIC® PLUS
- ARCHIE® Paddles
- Internal Water Heater
- Gentle Care Detergent and Photos

**Approximate Overall Dimensions:**

**Height** 36 15/16"  
**Width** 27"  
**Depth** 31 9/16"

Before install, consult installation instructions packed with product/kit for current dimensions.

SHAPE

**More Bosch Washers**

- WFM8440UC Bosch Nexxt 800 Series Front Load Washer with Aquastop - Silver and White
- WFM8445UC Bosch Nexxt 500 Plus Series Front Load Washer with Aquastop- Silver
- WAS24460UC Bosch AXXIS Plus Front Load Washer 1200 RPM - White

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## EXHIBIT 4

WFCM8440UC

<http://www.bosch-home.com/us/WFCM8440UC.html?source=search>

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## WFCM8440UC

Nexxt 800 Series  
Washer  
Silver and White Duo-Tone

- [Overview](#)
- [Technical specs](#)
- [Additional documents](#)
- 



[Click to enlarge](#)

### Product features

#### Performance -

- 4.2 cu.ft Drum Capacity
- 15 programs
- Spin Speed: 1200 rpm
- Internal Water Heater Heats Water Quickly and Efficiently
- Durable, Scratch Resistant, Mekalit Worktop
- Backed by Good Housekeeping Seal - Two Year Limited Warranty
- XXTRASANITARY® - NSF Certified Eliminates 99.99% of Bacteria
- Stain Removal Option Removes 14 Everyday Stains
- Comforter Cycle to Deeply Clean Bulky Items Like Comforters
- Quick Wash Cycle Completes Full Loads in as Little as 45 Min.
- Jeans Cycle Prevents Fading and Extends Fabric Life

Exhibit 4 Page 1

WPMC8440UC

<http://www.bosch-home.com/us/WPMC8440UC.html?source=search>

- KIDSCARE™ Cycle Removes a Variety of Tough Stains

**Efficiency -**

- Exceeds ENERGY STAR® 2011 Guidelines - Uses only 151 kWh/yr
- ECOACTION™ Option Reduces Energy Usage by up to 20%
- Washer Sensors Reduce Water Usage by up to 76%
- Bosch Washers Exceed Federal Energy Standards by up to 102%

**Quietness -**

- Virtually Silent: 53 dBA

**Safety -**

- AquaStop® Leak Protection Protects From Costly Water Damage

**Gentle Care -**

- NSF Certified - Eliminates 99.9% of Bacteria
- SENSOTRONIC PLUS Sensors Analyze Load and Optimizes the Cycle
- High Quality, Snag Free Stainless Steel Drum
- Additional Rinse Option Removes Any Traces of Detergent

3



## EXHIBIT 5

Wentworth

*Prestige EnviroMicrobiology, Inc*

Client: Iowa Environmental Services, Inc.

Client Project: Eppsteiner – Bosch Front Load Newton, IA

Sample date: 11-4-2010

Submittal date: 11-4-2010

Samples submitted by: Nancy Ivers

Data analysis completed: November 8, 2010

Prestige number: 101105-03

**Microscopic Method: Analysis of Tape-Lift Samples for Fungi by Optical Microscopy**

| Client sample ID<br>Location                               | Sample<br>dimension | Fungal ID           | Fungal structures observed    | Fungal<br>density | Notes         |
|--|---------------------|---------------------|-------------------------------|-------------------|---------------|
| 119284<br>Inner door gasket right of<br>6:00, before cycle | 3/4" x 3/4"         | <i>Aspergillus</i>  | spores, conidiophores, hyphae | 5                 | Fungal growth |
| 119285<br>Inner door gasket 8:00,<br>before cycle          | 2 1/2" x 3/4"       | <i>Cladosporium</i> | spores, conidiophores, hyphae | 1                 | Fungal growth |

1. The samples in this report were received in good, acceptable conditions.
2. Fungal density rating 1-5 (1 being the lowest and 5 the highest) indicates density of fungal growth structures observed. No fungal density is provided for loose spores, hyphal fragments and other structures.

Report approved: \_\_\_\_\_

*Theresa Lehman*  
Theresa Lehman, MPH, Lab Director

Quality control check: \_\_\_\_\_

*Chin S Yang*  
Chin S Yang, Ph.D.

Report review: \_\_\_\_\_

*Theresa Lehman*

**Prestige EnviroMicrobiology, Inc**

AHA Environmental Microbiology PAT Program participant

Laboratory ID Number 192810

Website: www.prestige-em.com

Client: Iowa Environmental Services, Inc.

Client Project: Eppsteiner – Bosch Front Load Newton, IA

Sample date: 11-4-2010

Submittal date: 11-4-2010

Inoculation dates: 11-5-2010 (Swabs & Bulks)

Samples submitted by: Nancy Ivers

Data analysis completed: November 12, 2010

Prestige number: 101105-03

**Culture Method: Culture Analysis of Swab Samples for Fungi Speciation**

| Client sample ID<br>Location                                  | Area<br>(in <sup>2</sup> ) | Medium<br>used | Dilution<br>factor | Fungal Identification  | Colony<br>counts                                 | Conc.<br>(CFU/ in <sup>2</sup> )   | Percentage  |
|---|----------------------------|----------------|--------------------|--|--|--|---|
| 119282<br>Inner door gasket<br>right of 6:00,<br>before cycle | 1/2                        | MEA            | 10,000x            | <i>Aspergillus niger</i><br><i>Aspergillus flavipes</i>  | 114<br>26  | 2,300,000<br>520,000<br>Total 2,800,000  | 81%<br>19%  |
| 119287<br>sump in outer tub                                   | 1/2                        | MEA            | 1,000x             | <i>Aspergillus versicolor</i><br><i>Penicillium citreonigrum</i><br><i>Penicillium citrinum</i><br><i>Penicillium restrictum</i>   | 17<br>4<br>1<br>1                                | 34,000<br>8,000<br>2,000<br>2,000<br>Total 46,000  | 74%<br>17%<br>4%<br>4%                                      |
| 119290<br>drain boot  | 1/2                        | MEA            | 1,000x             | <i>Aspergillus versicolor</i><br><i>Paecilomyces marquandii</i><br><i>Penicillium chrysogenum</i><br><i>Penicillium decumbens</i>  | 22<br>1<br>1<br>7                                | 44,000<br>2,000<br>2,000<br>14,000<br>Total 62,000   | 71%<br>3%<br>3%<br>23%                                      |
| 119292<br>button trap front<br>upper                          | 1/2                        | MEA            | 1,000x             | <i>Aspergillus fumigatus</i><br><i>Aspergillus sydowii</i><br><i>Aspergillus versicolor</i><br><i>Paecilomyces marquandii</i><br><i>Penicillium chrysogenum</i><br><i>Penicillium citrinum</i><br><i>Penicillium corylophilum</i><br><i>Penicillium decumbens</i><br><i>Penicillium restrictum</i><br><i>Penicillium viridicatum</i> | 1<br>9<br>14<br>16<br>1<br>1<br>1<br>4<br>1<br>2 | 2,000<br>18,000<br>28,000<br>32,000<br>2,000<br>2,000<br>2,000<br>8,000<br>2,000<br>4,000<br>Total 100,000 | 2%<br>18%<br>28%<br>32%<br>2%<br>2%<br>2%<br>8%<br>2%<br>4% |
| 119294<br>button trap back<br>lower                           | <1/2                       | MEA            | 100x               | <i>Aspergillus versicolor</i><br><i>Penicillium implicatum</i><br><i>Penicillium viridicatum</i>   | 16<br>1<br>1                                     | >3,200<br>>200<br>>200<br>Total >3,600   | 89%<br>6%<br>6%   |

**Prestige EnviroMicrobiology, Inc**

ATHA Environmental Microbiology PAT Program participant

Laboratory ID Number 192810

Website: www.prestige-em.com

|                                       |     |     |         |                                |    |               |     |
|---------------------------------------|-----|-----|---------|--------------------------------|----|---------------|-----|
| 119299<br>top of spinner<br>support   | 1/2 | MEA | 1,000x  | <i>Aspergillus sydowii</i>     | 1  | 2,000         | 1%  |
|                                       |     |     |         | <i>Aspergillus versicolor</i>  | 92 | 180,000       | 67% |
|                                       |     |     |         | <i>Penicillium decumbens</i>   | 5  | 10,000        | 4%  |
|                                       |     |     |         | <i>Penicillium implicatum</i>  | 1  | 2,000         | 1%  |
|                                       |     |     |         | <i>Penicillium restrictum</i>  | 37 | 74,000        | 27% |
|                                       |     |     |         | <i>Penicillium variable</i>    | 1  | 2,000         | 1%  |
|                                       |     |     |         |                                |    | Total 270,000 |     |
| 119301<br>gasket - tub<br>flange 6:00 | 1/2 | MEA | 10,000x | <i>Aspergillus flavipes</i>    | 8  | 160,000       | 36% |
|                                       |     |     |         | <i>Aspergillus fumigatus</i>   | 7  | 140,000       | 32% |
|                                       |     |     |         | <i>Aspergillus versicolor</i>  | 5  | 100,000       | 23% |
|                                       |     |     |         | <i>Penicillium viridicatum</i> | 2  | 40,000        | 9%  |
|                                       |     |     |         |                                |    | Total 440,000 |     |

**Culture Method: Culture Analysis of Bulk Samples for Fungi Speciation**

| Client sample ID<br>Location               | Wt. (g) | Medium<br>used | Dilution<br>factor | Fungal Identification           | Colony<br>counts | Conc.<br>(CFU/ g) | Percentage |
|--|---------|----------------|--------------------|---------------------------------|------------------|-------------------|------------|
| 119286<br>Back (rear half) of<br>outer tub | 0.1152  | MEA            | 10,000x            | <i>Aspergillus fumigatus</i>    | 2                | 170,000           | 1%         |
|  |         |                |                    | <i>Aspergillus sydowii</i>      | 82               | 7,100,000         | 32%        |
|  |         |                |                    | <i>Aspergillus versicolor</i>   | 41               | 3,600,000         | 16%        |
|  |         |                |                    | <i>Penicillium decumbens</i>    | 42               | 3,600,000         | 16%        |
|  |         |                |                    | <i>Penicillium fellutanum</i>   | 8                | 690,000           | 3%         |
|  |         |                |                    | <i>Penicillium restrictum</i>   | 78               | 6,800,000         | 31%        |
|  |         |                |                    | <i>Penicillium variable</i>     | 1                | 87,000            | <1%        |
|  |         |                |                    |                                 |                  | Total 22,000,000  |            |
| 119289<br>outer tub seal                   | 0.0456  | MEA            | 1,000x             | <i>Aspergillus flavipes</i>     | 1                | 22,000            | <1%        |
|  |         |                |                    | <i>Aspergillus fumigatus</i>    | 1                | 22,000            | <1%        |
|  |         |                |                    | <i>Aspergillus sydowii</i>      | 3                | 66,000            | 1%         |
|  |         |                |                    | <i>Aspergillus versicolor</i>   | 226              | 5,000,000         | 94%        |
|  |         |                |                    | <i>Chaetomium globosum</i>      | 1                | 22,000            | <1%        |
|  |         |                |                    | <i>Exophiala jeanselmei</i>     | 1                | 22,000            | <1%        |
|  |         |                |                    | <i>Penicillium decumbens</i>    | 3                | 66,000            | 1%         |
|  |         |                |                    | <i>Penicillium fellutanum</i>   | 1                | 22,000            | <1%        |
|  |         |                |                    | <i>Penicillium restrictum</i>   | 3                | 66,000            | 1%         |
|  |         |                |                    | <i>Penicillium variable</i>     | 1                | 22,000            | <1%        |
|  |         |                |                    |                                 |                  | Total 5,300,000   |            |
| 119296<br>paddle                           | 0.0115  | MEA            | 100x               | <i>Aspergillus fumigatus</i>    | 2                | 17,000            | 1%         |
|  |         |                |                    | <i>Aspergillus sydowii</i>      | 4                | 35,000            | 2%         |
|  |         |                |                    | <i>Aspergillus versicolor</i>   | 178              | 1,500,000         | 87%        |
|  |         |                |                    | <i>Penicillium decumbens</i>    | 8                | 70,000            | 4%         |
|  |         |                |                    | <i>Penicillium fellutanum</i>   | 2                | 17,000            | 1%         |
|  |         |                |                    | <i>Penicillium restrictum</i>   | 4                | 35,000            | 2%         |
|  |         |                |                    | <i>Penicillium variable</i>     | 1                | 8,700             | <1%        |
|  |         |                |                    | <i>Penicillium viridicatum</i>  | 3                | 26,000            | 1%         |
|  |         |                |                    | <i>Scopulariopsis chartarum</i> | 2                | 17,000            | 1%         |
|  |         |                |                    |                                 |                  | Total 1,700,000   |            |

**Prestige EnviroMicrobiology, Inc**

AHA Environmental Microbiology PAT Program participant

Laboratory ID Number 192810

Website: [www.prestige-em.com](http://www.prestige-em.com)

|                                     |        |     |         |                                 |    |                 |     |
|-------------------------------------|--------|-----|---------|---------------------------------|----|-----------------|-----|
| 119297<br>spinner support           | 0.1761 | MEA | 10,000x | <i>Aspergillus ustus</i>        | 3  | 170,000         | 5%  |
|                                     |        |     |         | <i>Aspergillus versicolor</i>   | 6  | 340,000         | 10% |
|                                     |        |     |         | <i>Penicillium decumbens</i>    | 6  | 340,000         | 10% |
|                                     |        |     |         | <i>Penicillium restrictum</i>   | 37 | 2,100,000       | 60% |
|                                     |        |     |         | <i>Penicillium viridicatum</i>  | 3  | 170,000         | 5%  |
|                                     |        |     |         | <i>Scopulariopsis chartarum</i> | 7  | 400,000         | 11% |
|                                     |        |     |         |                                 |    | Total 3,500,000 |     |
| 119298<br>top of spinner<br>support | 0.0374 | MEA | 10,000x | <i>Aspergillus versicolor</i>   | 12 | 3,200,000       | 50% |
|                                     |        |     |         | <i>Penicillium decumbens</i>    | 3  | 800,000         | 13% |
|                                     |        |     |         | <i>Penicillium restrictum</i>   | 9  | 2,400,000       | 38% |
|                                     |        |     |         |                                 |    | Total 6,400,000 |     |

Report approved: \_\_\_\_\_

Theresa Lehman, MPH, Lab Director

Quality control check: \_\_\_\_\_

Chin S Yang, Ph.D.

Report review: \_\_\_\_\_

1. The samples in this report were received in good, acceptable conditions.
2. Percentage is for each group in total population.
3. Concentrations and percentages are rounded to the nearest two significant digits. Total percentage may not add up to 100% due to rounding.
4. MEA=2% malt extract agar.
5. All culture samples are incubated at 25±0.5°C unless otherwise indicated.
6. The detection limit of this analysis is one fungal colony. The quantitation limits vary from analysis to analysis and by air volume. Contact us to determine your quantitation limits.
7. For technical information on result interpretation, please visit [www.Prestige-EM.com](http://www.Prestige-EM.com).

Tait

*Prestige EnviroMicrobiology, Inc*

Client: United Analytical Services, Inc.

Client Project: 1099492-01

Sample date: 11-2-2010

Submittal date: 11-2-2010

Samples submitted by: Kevin Aikman

Data analysis completed: November 8, 2010

Prestige number: 101103-06

**Microscopic Method: Analysis of Tape-Lift Samples for Fungi by Optical Microscopy**

| Client sample ID<br>Location                                  | Sample<br>dimension | Fungal ID                                | Fungal structures observed   | Fungal<br>density | Notes   |
|---|---------------------|--|--|-------------------|---|
| #EF-01T<br>Gasket Inside                                      | 3/4" x 3/4"         | <i>Cladosporium</i>                      | spores, conidiophores, hyphae                                      | 1                 | Fungal growth   |
| #EF-02T<br>Gasket Inside                                      | 3/4" x 3/4"         | <i>Cladosporium</i><br>yeasts            | spores, conidiophores, hyphae<br>budding cells                     | 1<br>1            | Fungal growth   |
| #EF-08T<br>Front Half of<br>Outer Tub                         | 3/4" x 3/4"         | <i>Cladosporium</i><br>yeasts            | spores, conidiophores, hyphae<br>budding cells                     | 1<br>1            | Mites and their fecal<br>matter observed;<br>Bacteria observed;<br>Fungal growth                        |
| #EF-09T<br>Back Half of<br>Outer Tub                          | 3/4" x 3/4"         | yeasts                                   | budding cells  | 1                 | Bacteria observed;<br>Fungal growth   |
| #EF-10T<br>Back Half of<br>Outer Tub - Rear<br>Rib Str.       | 3/4" x 3/4"         | <i>Cladosporium</i><br>yeasts<br>unknown | spores, conidiophores, hyphae<br>budding cells<br>other structures | 1<br>1<br>NA      | Mites and their fecal<br>matter observed;<br>Nematodes observed;<br>Bacteria observed;<br>Fungal growth |
| #EF-07T<br>Back of Det.<br>Dispenser - Main<br>Discharge Tube | 3/4" x 3/4"         | <i>Cladosporium</i>                      | spores, conidiophores, hyphae                                      | 5                 | Bacteria observed;<br>Fungal growth   |

1. The samples in this report were received in good, acceptable conditions.
2. Fungal density rating 1-5 (1 being the lowest and 5 the highest) indicates density of fungal growth structures observed. No fungal density is provided for loose spores, hyphal fragments and other structures.

Report approved: \_\_\_\_\_

*Theresa Lehman*

Theresa Lehman, MPH, Lab Director

Quality control check: \_\_\_\_\_

*Chin S Yang*

Chin S Yang, Ph.D.

Report review: \_\_\_\_\_

*Theresa Lehman*

242 Terrace Boulevard, Suite B-1, Voorhees, New Jersey 08043 Tel: 856-767-8300 Fax 856-767-8305

- p. 1 -

Exhibit 5, Page 5



***Prestige EnviroMicrobiology, Inc***

Client: United Analytical Services, Inc.

Client Project: 1099492.01

Sample date: 11-2-2010

Submittal date: 11-2-2010

Date of inoculation: 11-3-2010 (swabs)

Samples submitted by: Kevin Aikman

Data analysis completed: November 12, 2010

Prestige number: 101103-06

**Culture Method: Culture Analysis of Swab Samples for Bacteria (Heterotrophic Plate Count)**

| Client sample ID<br>Location                          | Area<br>(inch <sup>2</sup> ) | Medium<br>used | Dilution<br>factor | Colony counts | Conc. (CFU/ inch <sup>2</sup> ) |
|---|------------------------------|----------------|--------------------|---------------|---------------------------------|
| EF-01B<br>Gasket Inside                               | 1                            | PCA            | 20,000x            | 436           | 8,700,000<br>Total 8,700,000    |
| EF-02B<br>Gasket Inside                               | 1                            | PCA            | 20,000x            | 87            | 1,700,000<br>Total 1,700,000    |
| EF-03B<br>Gasket Inside                               | 1                            | PCA            | 20,000x            | 166           | 3,300,000<br>Total 3,300,000    |
| EF-04B<br>Gasket Inside                               | 1                            | PCA            | 20,000x            | 34            | 680,000<br>Total 680,000        |
| EF-05B<br>Gasket Inside                               | 1                            | PCA            | 20,000x            | 31            | 620,000<br>Total 620,000        |
| EF-06B<br>Gasket Inside                               | 1                            | PCA            | 20,000x            | 143           | 2,900,000<br>Total 2,900,000    |
| EF-07B<br>Back of Detergent<br>Dispenser – Main Drain | 1                            | PCA            | 20,000x            | 138           | 2,800,000<br>Total 2,800,000    |
| EF-08B<br>Front Half of Outer Tub                     | 1                            | PCA            | 20,000x            | 474           | 9,500,000<br>Total 9,500,000    |
| EF-09B<br>Back Half of Outer Tub                      | 1                            | PCA            | 20,000x            | 497           | 9,900,000<br>Total 9,900,000    |
| EF-10B<br>Back Half of Outer Tub –<br>Rear Rib Str.   | 1                            | PCA            | 20,000x            | 248           | 5,000,000<br>Total 5,000,000    |
| EF-11B<br>Bearing Seal                                | 1                            | PCA            | 20,000x            | 482           | 9,600,000<br>Total 9,600,000    |
| EF-12B<br>Spinner Support                             | 1                            | PCA            | 20,000x            | 492           | 9,800,000<br>Total 9,800,000    |
| EF-13B<br>Under Spinner Support                       | 1                            | PCA            | 20,000x            | 334           | 6,700,000<br>Total 6,700,000    |
| EF-14B<br>Drum Baffle                                 | 1                            | PCA            | 20,000x            | 357           | 7,100,000<br>Total 7,100,000    |
| EF-15B<br>F. Blank                                    | NA                           | PCA            | 200x               | NA            | NA                              |

*Prestige EnviroMicrobiology, Inc*

Report approved: Theresa Lehman  
Theresa Lehman, MPH, Lab Director

Quality control check: Chin S Yang  
Chin S Yang, Ph.D.

Report review: Theresa Lehman

1. The samples in this report were received in good, acceptable conditions.
2. Percentage is for each group in total population.
3. Concentrations and percentages are rounded to the nearest two significant digits. Total percentage may not add up to 100% due to rounding.
4. PCA=plate count agar.
5. All culture samples are incubated at  $25 \pm 0.5^\circ\text{C}$  unless otherwise indicated.
6. The detection limit of this analysis is one fungal or bacterial colony. The quantitation limits vary from analysis to analysis and by air volume. Contact us to determine your quantitation limits.

**Prestige EnviroMicrobiology, Inc**  
ATPA Environmental Microbiology PAT Program participant  
Laboratory ID Number 192810  
Website: [www.prestige-em.com](http://www.prestige-em.com)

Client: United Analytical Serv., Inc.

Client Project: 1099492.01

Sample date: 11-2-2010

Submittal date: 11-2-2010

Inoculation dates: 11-3-2010 (Swab)

Samples submitted by: Kevin Aikman

Data analysis completed: November 15, 2010

Prestige number: 101103-06

**Culture Method: Culture Analysis of Swab Samples for Fungi**

| Client sample ID<br>Location                             | Area<br>(in <sup>2</sup> ) | Medium<br>used | Dilution<br>factor | Fungal Identification  | Colony<br>counts             | Conc.<br>(CFU/ in <sup>2</sup> )                                       | Percentage                           |
|--|----------------------------|----------------|--------------------|--|------------------------------|--|--------------------------------------|
| EF-01M<br>Gasket inside                                  | 1                          | MEA            | 1,000x             | <i>Fusarium solani</i><br><i>Paecilomyces marquandii</i><br><i>Scolecobasidium constrictum</i><br>yeasts   | 3<br>1<br>6<br>245           | 3,000<br>1,000<br>6,000<br>250,000<br>Total 260,000                    | 1%<br><1%<br>2%<br>96%               |
| EF-02M<br>Gasket inside                                  | 1                          | MEA            | 10,000x            | <i>Scolecobasidium constrictum</i><br>yeasts   | 1<br>32                      | 10,000<br>320,000<br>Total 330,000                                     | 3%<br>97%                            |
| EF-03M<br>Gasket inside                                  | 1                          | MEA            | 10,000x            | <i>Fusarium solani</i><br><i>Geotrichum candidum</i><br>yeasts   | 16<br>2<br>127               | 160,000<br>20,000<br>1,300,000<br>Total 1,500,000                      | 11%<br>1%<br>88%                     |
| EF-04M<br>Gasket inside                                  | 1                          | MEA            | 10,000x            | <i>Fusarium solani</i><br><i>Geotrichum candidum</i><br><i>Paecilomyces marquandii</i><br><i>Scolecobasidium constrictum</i><br>yeasts                               | 11<br>7<br>4<br>15<br>358    | 110,000<br>70,000<br>40,000<br>150,000<br>3,600,000<br>Total 4,000,000 | 3%<br>2%<br>1%<br>4%<br>91%          |
| EF-05M<br>Gasket inside                                  | 1                          | MEA            | 10,000x            | <i>Fusarium solani</i><br><i>Geotrichum candidum</i><br>yeasts   | 11<br>4<br>183               | 110,000<br>40,000<br>1,800,000<br>Total 2,000,000                      | 6%<br>2%<br>92%                      |
| EF-06M<br>Gasket inside                                  | 1                          | MEA            | 1,000x             | <i>Aspergillus sydowii</i><br><i>Fusarium solani</i><br><i>Geotrichum candidum</i><br><i>Paecilomyces marquandii</i><br><i>Scolecobasidium constrictum</i><br>yeasts | 1<br>5<br>2<br>1<br>1<br>286 | 1,000<br>5,000<br>2,000<br>1,000<br>1,000<br>290,000<br>Total 300,000  | <1%<br>2%<br>1%<br><1%<br><1%<br>97% |
| EF-07M<br>Back of detergent<br>dispenser – main<br>drain | 1                          | MEA            | 10,000x            | <i>Aspergillus sydowii</i><br><i>Cladosporium spp.</i><br><i>Geotrichum candidum</i><br><i>Scolecobasidium constrictum</i>   | 1<br>18<br>1<br>9            | 10,000<br>180,000<br>10,000<br>90,000<br>Total 290,000                 | 3%<br>62%<br>3%<br>31%               |

**Prestige EnviroMicrobiology, Inc**

AJFA Environmental Microbiology PAT Program participant

Laboratory ID Number 192810

Website: [www.prestige-em.com](http://www.prestige-em.com)

|  |    |     |         |   |                              |   |                                    |
|--|----|-----|---------|---|------------------------------|---|------------------------------------|
| EF-08M<br>Front half of<br>outer tub                   | 1  | MEA | 10,000x | <i>Cladosporium</i> spp.<br><i>Geotrichum candidum</i><br><i>Scolecobasidium constrictum</i><br>yeasts  | 13<br>1<br>1<br>9            | 130,000<br>10,000<br>10,000<br>90,000<br>Total 240,000    | 54%<br>4%<br>4%<br>38%             |
| EF-09M<br>Back half of<br>outer tub                    | 1  | MEA | 1,000x  | <i>Geotrichum candidum</i><br><i>Rhodotorula glutinis</i><br><i>Scolecobasidium constrictum</i><br>yeasts   | 1<br>1<br>1<br>31            | 1,000<br>1,000<br>1,000<br>31,000<br>Total 34,000         | 3%<br>3%<br>3%<br>91%              |
| EF-10M<br>Back half of<br>outer tub – rear<br>rib str. | 1  | MEA | 1,000x  | <i>Aspergillus carbonarius</i><br><i>Penicillium</i> spp.<br><i>Trichoderma atroviride</i><br>yeasts  | 2<br>2<br>1<br>92            | 2,000<br>2,000<br>1,000<br>92,000<br>Total 97,000         | 2%<br>2%<br>1%<br>95%              |
| EF-11M<br>Bearing seal                                 | 1  | MEA | 100x    | <i>Acremonium kiliense</i><br><i>Aspergillus sydowii</i><br><i>Chaetomium globosum</i><br><i>Harposporium anguillulae</i><br><i>Penicillium</i> sp.<br><i>Scolecobasidium constrictum</i> | 6<br>5<br>3<br>53<br>1<br>14 | 600<br>500<br>300<br>5,300<br>100<br>1,400<br>Total 8,200 | 7%<br>6%<br>4%<br>65%<br>1%<br>17% |
| EF-12M<br>Spinner support                              | 1  | MEA | 10,000x | <i>Acremonium kiliense</i><br><i>Aspergillus carbonarius</i><br><i>Paecilomyces marquandii</i><br><i>Scolecobasidium constrictum</i>  | 51<br>1<br>3<br>2            | 510,000<br>10,000<br>30,000<br>20,000<br>Total 570,000    | 89%<br>2%<br>5%<br>4%              |
| EF-13M<br>Under spinner<br>support                     | 1  | MEA | 1,000x  | <i>Acremonium kiliense</i><br><i>Fusarium solani</i><br><i>Scolecobasidium constrictum</i>  | 2<br>23<br>5                 | 2,000<br>23,000<br>5,000<br>Total 30,000                  | 7%<br>77%<br>17%                   |
| EF-14M<br>Drum baffle                                  | 1  | MEA | 100x    | <i>Fusarium solani</i><br><i>Harposporium anguillulae</i>   | 2<br>1                       | 200<br>100<br>Total 300                                   | 67%<br>33%                         |
| EF-15M<br>Field blank                                  | NA | MEA | 100x    | No fungal growth detected   | NA                           | NA  | NA                                 |

Report approved: Theresa Lehman  
Theresa Lehman, MPH, Lab Director

Quality control check: Chin S Yang  
Chin S Yang, Ph.D.

Report review: Theresa Lehman

1. The samples in this report were received in good, acceptable conditions.

242 Terrace Boulevard, Suite B-1, Voorhees, New Jersey 08043 Tel: 856-767-8300 Fax 856-767-8305

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***Prestige EnviroMicrobiology, Inc***

*AIHA Environmental Microbiology PAT Program participant*

*Laboratory ID Number 192810*

*Website: [www.prestige-em.com](http://www.prestige-em.com)*

2. Percentage is for each group in total population.
3. Concentrations and percentages are rounded to the nearest two significant digits. Total percentage may not add up to 100% due to rounding.
4. MEA=2% malt extract agar.
5. All culture samples are incubated at  $25 \pm 0.5^{\circ}\text{C}$  unless otherwise indicated.
6. The detection limit of this analysis is one fungal colony. The quantitation limits vary from analysis to analysis and by air volume. Contact us to determine your quantitation limits.
7. For technical information on result interpretation, please visit [www.Prestige-EM.com](http://www.Prestige-EM.com).

## EXHIBIT 6



## Features and Benefits of Your New Washer

### **SENSOTRONIC<sup>®</sup> Technology**

The Bosch **SENSOTRONIC<sup>®</sup>** technology optimizes the wash process at every stage of the cycle by sensing load size, water level and temperature needs for superior results. Digital sensors care for all fabrics including wool, mohair and silk. This machine virtually operates at the touch of a button.

### **Exclusive Hinge and Gasket System**

A reinforced hinge and a new, revolutionary gasket design keep the door shut. They also seal in the heat, allowing your laundry to reach the optimum temperature, which eliminates even the toughest stains.

### **3-Part Detergent Dispenser**

A 3-part dispenser automatically distributes the appropriate amounts of detergent, bleach and softener at exactly the right times. And, working together with our unique suds sensor, you can be sure your clothing is rinsed completely clean.

### **XXTRASANITARY<sup>™</sup> Cycle**

With this innovative cycle, a thermostat-controlled, intelligent sensor heats up the water to 170° F and maintains the temperature for exactly 3 minutes. After killing 99.9% of most common household bacteria, the water temperature is reduced to a gentler 150° F to prevent clothing breakdown. The clothes are thoroughly cleaned and sanitized with no damage to fibers.

### **Archie Paddles**

As your wash gently tumbles, Archie paddles cascade water from high above, rinsing away suds and giving your laundry a complete, even clean. An inclined drum works with them to ensure not a single shirt goes untuned.

### **Stainless Steel Drum**

The Nexxt washer drum has hundreds of smooth double punched holes, which allow your garments to gently tumble completely snag-free.

### **Internal Water Heater**

An Internal Heating Element heats the water to up to 170° F while a Digital Temperature Sensor continually monitors the water temperature. Bosch Nexxt<sup>™</sup> washers deliver the most efficient and accurate water heating method for each selected fabric type.

### **Quiet Performance**

Bosch laundry appliances use brushless motors, suspended pump systems and special sound-deadening material to keep them exceptionally quiet while in operation. Which means they can be installed virtually anywhere in the home without causing a disturbance.

### **SYNCRO<sup>™</sup> Technology**

Manage your washer and dryer times with the **SYNCRO<sup>™</sup>** Technology Operation Logic. The Nexxt<sup>™</sup> Dryers coordinate with the spin speed of the washer, based upon the fabric setting and water temperature of your wash load. Therefore, your wash pile won't stack up as you wait for your dryer to finish its cycle.

Dispenser I:  
Dispenser for detergent, stain remover.

- i** We recommend HE detergents because they are particularly designed to deliver optimum performance from your front-loading washer. Not using HE detergent could cause problems such as oversudsing, extended cycle periods, or a decrease in wash performance.

Dispenser II:  
Cleaning additives, e.g. fabric softener, fabric conditioner. Do not fill over edge of max line!

Dispenser III:  
Dispenser for liquid bleach (chlorine bleach, color safe bleach).  
Do not overfill!

- i** Concentrated or thick fabric softener, conditioner and powder-bleach must be diluted with a little water before being poured into the dispenser (prevents overflow due to obstruction).
- i** Close the flap of the detergent dispenser. Please ensure the lid is entirely closed.

## Decolorizing

### ATTENTION

Dyes may contain sulphur or chlorine. These substances may cause parts of the washing machine to corrode. Do not dye items of laundry in the washing machine.

## Programs and Functions

Cycle time will vary depending on cycle selected, temperature and pressure of incoming water, water hardness, size of load, type of fabrics and distance of unit from the drain.

The maximum spin speeds of the programs are dependent upon the cycle. For adjusting the spin speed, see page 18.

## Basic programs

### Regular/Cotton Temp boost

Regular/Cotton settings are intended to be used for heavily soiled and/or stained colorfast fabrics. Sturdy, hard-wearing items made of cotton or linen such as towels, sheets or white sports socks.

### Regular/Cotton hot

Normally and/or heavily soiled colorfast fabrics. Sturdy, hard wearing items made of cotton or linen such as work clothes and underwear.

### Regular/Cotton Warm

Lightly and/or normally soiled non-colorfast fabric. Sturdy, hard wearing items made of cotton or linen such as jeans, T-shirts and sweatshirts.

### Regular/Cotton Cold

Lightly soiled non-colorfast fabric. Sturdy, hard wearing items made of cotton or linen (colors that may bleed or fade).

### Permanent Press Hot

Items consisting of normally soiled colorfast cotton, permanent press, linen, synthetic or blended fabrics and outer garments. Clothes requiring a special tumble sequence and spin speed to minimize creasing.

### Permanent Press Warm

Items consisting of lightly and/or normally soiled non-colorfast cotton, permanent press, linen, synthetic or blended fabrics and outer garments. Clothes requiring a special tumble sequence and spin speed to minimize creasing.

### Permanent Press Cold

Items consisting of lightly and/or normally soiled non-colorfast cotton, permanent press, linen, synthetic or blended fabrics and outer garments. Clothes requiring a special tumble sequence and spin speed to minimize creasing.

## Special programs

### Delicates/Silk

Delicates/Silk settings are intended for use with delicate easy care items made of cotton, satin, synthetic, or blended fabrics and curtains, dresses, skirts and blouses.


Bulky items, e.g. comforters, can be washed with this cycle because of gentle action and additional rinse (automatically added).

No spinning between rinse cycles.

### Hand Wash

Hand Wash settings are intended for very delicate easy care items that usually require hand washing.

These cycles have been specifically designed to provide extremely gentle treatment of fabrics.

Silk or other items marked with the "Hand Wash" symbol  on the care label can be safely washed with this cycle.

### Wool

Woolens (machine wash and hand wash).

### Quick Wash 25

For mixed load, e.g. cotton, linen, synthetic materials or blended fabrics, lightly soiled.

### XXTRA SANITARY

This program was specifically designed to eliminate most common household bacterium while providing gentle treatment of fabrics. At the beginning of the washing phase, hot water is introduced and then the internal heating element heats the water to 167°F–174°F for a minimum of three minutes. Clothes will be saturated in the hot water long enough to kill most common household bacterium, yet without causing additional wear and tear to the clothes.

Used for heavily soiled and/or stained colorfast fabrics that need to be sanitized, such as, towels, underwear, socks, bed sheets, table clothes, etc.

During the washing phase, the drum rotates in opposite directions at 40 rpm repeatedly. Spin speed reaches 1100 rpm for both intermediate and final spin to reduce the remaining moisture content and chemical residues contained in the loads as well as optimize the rinsing efficiency.

Additional options can be selected for this program such as "Rinse plus", "Bleach", and "Heavy duty". All these options can be selected individually or simultaneously.

Selecting "Rinse plus" will add an additional rinse to the program to better remove chemical residue.

Selecting "Bleach" option will ensure bleach dispensation at the right time. The dynamic load sensor will add enough water to dilute the bleach, preventing bleach marks on the clothes.

"Heavy duty" option will extend the wash phase to a longer period of time to achieve optimum wash performance (see detailed explanation of heavy duty).

#### Rinse and Spin

Program for rinsing unsoiled textiles, e.g. swimwear, and for removing detergent residue from textiles. Ends with a spin cycle.

#### Spin

Spin cycle for spinning wet, hand washed laundry. Water is drained before and during the spin cycle.

#### Drain

Can be used to drain water without a spin cycle.

#### Temperature Settings

The following wash temperatures are available:

XXTRASANITARY 170 °F (77 °C)

Temp. boost: 150 °F (66 °C)

(only Regular/Cotton)

hot: 125 °F (52 °C)

warm: 95 °F (35 °C)

cold: 60 °F (15 °C)

#### Maximum spin speeds of the programs

The Indicator light "max spin speed" is lit red.

| Revolutions per minute | Program         |
|------------------------|-----------------|
| 1100                   | Regular/Cotton  |
| 800                    | Permanent Press |
| 600                    | Delicates/Silk  |
| 800                    | Wool            |
| 1000                   | Quick Wash 25   |
| 1100                   | Spin            |
| 1100                   | Rinse and Spin  |
| 1100                   | XXtra Sanitary  |

#### Reduced spin

The Indicator light "reduced spin" is lit red.

Only if you have selected a reduced spin speed for gentle treatment of your laundry.

#### Gentle spin speeds

The indicator light "Gentle spin speed" is lit red.

| Revolutions per minute | Program   |
|------------------------|-----------|
| 400                    | Hand Wash |

#### No final spin

The Indicator light "no final spin" is lit red.

For delicate laundry, the water remains in the machine after the last rinse.

Use this setting to avoid creasing if the clothing cannot be taken out of the washing machine immediately upon completion of the cycle.

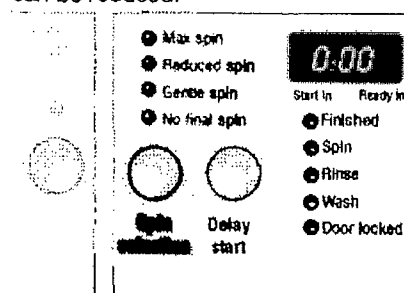
### ATTENTION

Before unloading you must drain the remaining water by selecting **Drain** or **Spin** and starting the machine.

#### Modifiers

##### Spin Selection

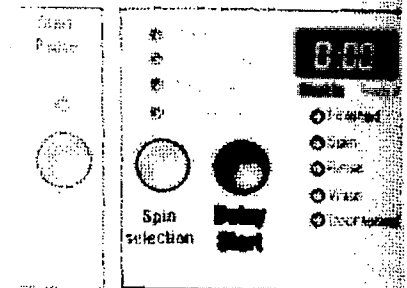
Preset cycle setting of max. spin speed can be reduced.



Press this button until the desired setting is indicated.

#### Delay Start

Before starting a program you can modify when the cycle should be started.



Press **Delay Start** button. The display shows the start time **0:00**.

The time can be delayed up to a maximum of 19 hours (with 1 hour increments) by pressing the **Start in** button repeatedly.

The **Start** time begins running immediately after pushing the **Start/Pause** button. This is indicated by the points between the digits flashing.

**i** Changes to the **Start** time are possible at any time, press the **Delay Start** button until the new time appears.

**i** If the program is changed or if the program is interrupted, the preselected **Start** time is also interrupted. The **Ready in time** of the program is displayed. The **Start** time must be reselected.

## EXHIBIT 7















## EXHIBIT 8

B/S/H/

BSH HOME APPLIANCES CORPORATION

Michael L. Baroni  
General Counsel  
August 24, 2007

Carla Ogden – Citizen's Advocate  
Office of the Attorney General  
Consumer Protection Division  
500 South 2<sup>nd</sup> Street  
Springfield, IL 62706

RE: Customer ██████████, file no. 2007-CONSC-00186382  
regarding Mr. Roley's Bosch clothes washer

Dear Ms. Ogden:

I am the General Counsel for BSH Home Appliances Corporation, manufacturers of Bosch washing machines, and have reviewed your correspondence relating to this matter, as well as BSH's own files.

This is a relatively simple matter that has been blown out of proportion, in particular by Rick's Appliances which irresponsibly stated that Bosch's information was "confusing and contradictory". The only party making this matter confusing is Rick's.

First, please note that virtually every clothes washer in the market is prone to developing odors. Sometimes this is due to substances within the water in a customer's home, and the residue it leaves. Sometimes it is due to the types of soil, debris or other matter on the customer's clothes, or the type of detergent they use, which can leave a residue which eventually leads to some sort of bacterial growth. Also, when customers choose to use cold water (instead of hot), this can prevent the breakdown of proteins, detergents, and other matter, which can lead to a build up of such matter, and eventually – bad odors.

In any event, Bosch (like most other manufacturers) recommends keeping the door open to air out the product; it's a simple solution. However, in the event someone has children in the premises (and therefore wants to keep the door closed at all times), Bosch recommends that the customer: (i) wipe up any residual water which may be in the door's rubber ring after each use of the washer for the day; and (ii) run an empty wash with a cup of chlorine bleach to sanitize the washer, every month or so. Some people also like to add a little Borax to their wash, which seems to help. (And please note, there isn't an appliance in the world which doesn't require some care and maintenance to ensure ideal

BOSCH AND SIEMENS HOME APPLIANCES GROUP

BSH Home Appliances Corporation  
5551 McFadden Avenue, Huntington Beach, CA 92646  
Phone: 714-899-3506 michael.baroni@bshg.com

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BSH006649

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functionality; stoves, for example, must be wiped clean to ensure the burners continue to function properly).

Finally, I am compelled to address the attacks from Mr. Roley and Rick's Appliances on the issue of child safety, since they both seemed to scoff at Bosch's warnings relating to children playing in or around the appliance, or to suggest that child safety and product functionality are somehow contradictory.

Bosch cares deeply about child safety, and has taken a leadership position by reminding parents and guardians to properly supervise their children, in general to keep their children away from appliances, and to teach them about safety and proper appliance use. This should be obvious to the reasonable consumer, but unfortunately, children are routinely hurt (sometimes horribly so) by playing on, in or around appliances with parents or guardians who don't properly supervise and/or teach their children. Fortunately, child injuries with Bosch product have been extremely rare, but we still want to send the message that appliances can be dangerous in the hands of children, period – and parents/guardians must take responsibility for proper supervision.

Thank you for letting Bosch respond in this matter. If Mr. Roley doesn't like his product, we will be happy to credit his purchase to the dealer as a matter of customer good will, and he can select whatever brand of product he wants (but again, he will face the same general issue with any brand).

Bosch would of course prefer to see Mr. Roley remain a Bosch customer, happy and satisfied. There is, after all, a reason why Bosch washers and dryers have been rated #1 in Customer Satisfaction (JD Powers Award) and overall rated #2 by *Consumer Reports*. Should Mr. Roley opt for the dealer credit offer, however, he may contact Jacquelyn Dalot in Customer Service at (714) 899-3588.

Sincerely,

  
Michael L. Baroni

cc: ~~Mr. Roley~~  
~~Customer Service~~  
~~Atlanta, IL (714) 899-3588~~

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BSH006650



B/S/H/

BSH HOME APPLIANCES CORPORATION

Michael L. Baron  
General Counsel

October 15<sup>th</sup>, 2007

Carla Ogden – Citizen's Advocate  
Office of the Attorney General  
Consumer Protection Division  
500 South 2<sup>nd</sup> Street  
Springfield, IL 62706

RE: ~~REDACTED~~ Roley – Your File No. 2007-CONSC-00186382

Dear Ms. Ogden:

I am in receipt of your October 1<sup>st</sup> letter with Mr. Roley's hand-written commentary.

As I stated in my previous letter of August 24<sup>th</sup>, the issue of potential odor within a laundry unit is common to all front-load laundry manufacturers. There is no defect, and no safety issue.

In fact, Bosch laundry is the *best laundry product on the market* when it comes to limiting or preventing odor. Why? Because Bosch has the best rubber door seal and drainage system design and quality on the market, the best flushing with each wash, and the fewest spaces for moisture to be trapped in. I have personally inspected the Bosch washer alongside the top competitors, and seen for myself why Bosch is better.

I chair the legal group of the home appliance industry, and just returned from a meeting in D.C. where I met with representatives from across the industry. Having discussed this topic with other representatives throughout the industry, I can assure you that Bosch is the leader in this matter.

Again, as I stated previously, there are myriad factors which can lead to odor—and most of them are customer-based (the type of detergent, soils/debris, use of cold water, the quality of the household's water, failure to maintain the unit, hot/humid environment and infrequent washes, etc.).

BOSCH AND SIEMENS HOME APPLIANCES GROUP

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BSH006641

Continuing to go in circles on this matter with Mr. Roley is like trying to convince someone that stoves have a flame, and flames are dangerous, and you should therefore keep your children away from stoves; yet I assume Mr. Roley would nonetheless be attacking Bosch, arguing that we had a "safety" problem with our stoves because fire comes out of the burners and we recommend that people keep their children off of stove tops. Many brands of high-end knives state that the knives should be air dried; would Mr. Roley attack them, since such manufacturers are in effect advocating keeping knives out, within the potential reach of children? Car manufacturers require child safety seats; does that make the car unreasonably dangerous or defective? Pools are deadly for children without adult supervision. Blenders need to be aired out, despite having sharp blades. In fact, there are limitless products that need some sort of care or maintenance which could be dangerous in a child's hands—that's why the only real protection for children is responsible adult supervision, and education/discipline of the child, and to keep certain products away from child access.

We all wish we lived in a perfect world where our loves ones couldn't get hurt. The reality, however, is that products are not perfect, and there is no feasible way to design-out every conceivable safety issue—but that hardly makes products defective or dangerous in a way which makes them legally or societally unacceptable. Millions of people have no problem with the fact that it's best to leave a washer door open. Mr. Roley is the only one, to my knowledge, who has complained about the matter to BSH and who simply can't accept that it's best to air out one's washer, and to keep children away from appliances. I remember in my youth, my mother strongly warning me about the dangers of crawling into refrigerators or washers; there is no substitute for parental care.

If Mr. Roley is truly that concerned about the need to leave a washer door open, and he is unable to close off the room where the laundry units are located (i.e., blocking the unit from child access), then perhaps he should seriously consider switching to a top-loader (since the drum is positioned horizontally in top loaders, these machines use gravity to pull the water downward to drain out; some people argue that top loaders are therefore less prone to the "odor" problem than front loaders, although to my knowledge there is no scientific confirmation of this).

To condemn the Bosch washer and safety warnings would be tantamount to condemning the entire industry and the front-load washer itself. BSH has arranged for a credit so Mr. Roley can get a new product. I wish Mr. Roley well in his quest for a product which will satisfy him, but I do not see what else can be expected of BSH.

Sincerely,



Michael L. Baroni

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BSH006642

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## EXHIBIT 9

# EPPSTEINER & FIORICA ATTORNEYS LLP

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Suite 202  
Boulder, Colorado 80102  
Tel (877) 480-1500  
Fax (858) 350-1501

www.eppsteiner.com

December 15, 2009

## VIA CERTIFIED U.S. MAIL - RETURN RECEIPT REQUESTED

|   |   |
|---|---|
| BSH Home Appliances Corporation<br>5551 McFadden Avenue<br>Huntington Beach, CA 92649           | Pacific Sales, Inc.<br>24120 Garnier Street<br>Torrance, CA 90505   |
| Michael Traub<br>5551 McFadden Avenue<br>Huntington Beach, CA 92649                             | Pacific Sales Kitchen and Bath Centers, Inc.<br>7601 Penn Avenue S.<br>Richfield, MN 55423                                |
| Best Buy Company Incorporated<br>Legal Department<br>7601 Penn Avenue S.<br>Richfield, MN 55423 | CT Corporation<br>Re: Pacific Sales Kitchen and Bath Centers,<br>Inc.<br>818 West Seventh Street<br>Los Angeles, CA 90017 |

**Re: Notice of Violation of the California Consumer Legal Remedies Act (California Civil Code section 1750 et seq.) Related to the Advertising and Marketing of Bosch Frontload Washing Machines**

**To Whom It May Concern:**

The law firm of Eppsteiner & Fiorica Attorneys, LLP represents Nancy Wentworth, a California resident who purchased a Bosch DLX Series frontload washing machine from Pacific Sales, Inc. of Torrance, California for her personal, family and household use.

This letter serves as a pre-litigation notice of BSH Home Appliances Corporation's ("Bosch") violations of California Civil Code § 1750 et. seq., the California Legal Remedies Act ("CLRA") and demand for corrective action pursuant to the CLRA. This pre-litigation notification is made on behalf of Ms. Wentworth and all consumers that are similarly situated to Ms. Wentworth (e.g. other buyers of front load washing machines manufacturers by Bosch and sold under the brands Bosch and Siemens ("Machines")).

Bosch has engaged in acts and practices, which are proscribed by the CLRA (See §

Exhibit 9, Page 1

74847

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1770), by selling its defective frontload washers under the Bosch and Siemens brands. Specifically the Machine(s) have inherent design defects, defects in component parts and defects in workmanship that cause them to:

1. retain water and moisture;
2. retain detergent and fabric softener such that residue accumulates and causes the growth of mold, mildew and similar bio-organic material ("Mold") and malodorous scents resulting from their presence;
3. accumulate residue and Mold, and emit malodorous scents after the Machines are operated using the amount and type of detergent or softener Bosch recommends;
4. accumulate residue when detergent and softener dispenser compartments are filled to, or below, the detergent and softener fill lines Bosch placed in the Machines;
5. grow and accumulate Mold on parts, pieces and areas that are within the Machines;
6. produce foul and noxious odors;
7. grow and retain Mold and make clothes washed in the Machines smell moldy and malodorous;
8. be unsafe for the ordinary purpose for which the washing machines were designed and sold (e.g. making clothes clean and removing unpleasant odors);
9. not be able to clean themselves in a manner necessary for a Machine to produce clean clothes free of malodorous smells; and
10. be run with high temperature water and/or with special scented or anti-mold agents in an effort to temporarily remove Mold and malodorous smells associated with the presence Mold.

The defects result in Mold growing on and becoming imbedded in the rubber gasket/bellows/boot and/or the portions of the washer adjacent to, or in contact with, the door gasket/bellows/boot.

Water and moisture are retained in areas of the Machines that cause and allow Mold to appear, grow and be retained within the Machines. The presence of Mold causes: 1) the Machines to smell malodorous; 2) clothes washed in the Machines to smell malodorous; 3) clothes washed in the Machines to be rendered worth less; and 4) illness and injury to people.

The Machines are designed, made of component parts and materials, and assembled such that it is impossible to clean the Machines of Mold once Mold appears in or on materials within the Machines.

Bosch knew before it sold the Machines that they would cause Mold to grow inside of them and would make clothes washed in them smell malodorous. Furthermore, Bosch knew that Mold causes adverse reactions in many people causing illness and injury. However, Bosch concealed this material information from Ms. Wentworth, all similarly situated consumers, and all parties in the chain of commerce that led to Ms. Wentworth's purchase and similarly situated

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consumers' purchases of Machines. Had Bosch made said material information known to Ms. Wentworth and all other similarly situated consumer purchasers of Machines, none of them would have bought a Machine.

Selling washing machines that have inherent properties that cause Mold to grow and accumulate and which Mold impregnates portions of the Machines and clothes washed in them with malodorous scents violates California Civil Code § 1770. These violations include, but are not limited to subsections 1770(a)(5) and 1770(a)(7) by representing that the Machines (i) have "... characteristics, ... uses, [or] benefits, ... which [they do] not have," and/or (ii) are of "a particular standard, quality, or grade."

#### **Bosch's Omissions of Material Facts in Violation of the CLRA**

As described above, Bosch misrepresented the use and characteristics of the Machines through concealment and omission of material facts. Bosch failed to inform consumers directly or through wholesalers and retailers that Mold would grow in their Machines and that clothes washed in the Machines would smell like Mold and carry malodorous scents when the Machines were used in a foreseeable manner and as recommended by Bosch. A washing machine is used to clean clothes and rid them of bad smells. The Machines make clothes smell bad and carry Mold. The Machines were misrepresented regarding their characteristics, uses and benefits. They do not clean clothes; rather they make them moldy and smell bad.

#### **Bosch's Misrepresentations of the Uses, Benefits and Characteristics of the Machines**

At the most basic level, the function of a washing machine is to clean clothes so that they are clean and either fresh smelling, or at the very least, odorless. The Machines fail this most basic purpose. The Machines do not clean things, which is the use for which they were sold and the benefit of using them. The fact that Bosch knew the Machines generated mold and made clothes washed in them smell moldy means that Bosch knew it was not selling products that washed clothes. Effectively, calling the Machines "washing machines" or "washers" was a misrepresentation of their characteristics, benefits and uses. Bosch did not intend to sell a washing machine as advertised (e.g. one that cleans clothes, since it knew the Machines would grow and accumulate mold). The very representation that the Machines are "washing machines" is false. All representations Bosch made with regard to cleanliness of laundry that comes out of the Machines is also false.

Bosch also violated the California Consumer Legal Remedies Act, California Civil Code § 1770(a)(9) by "advertising goods or services with intent not to sell them as advertised." First, Bosch knew the Machines grew and accumulated mold. Second, it knew when it advertised the Machines as "washing machines" or "washers" that the Machines would not wash or clean things, but make them moldy and smelly. Therefore, Bosch advertised the Machines with the intention of not selling machines that washed or cleaned clothes.



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**Mold Issues**

Mold, according to the Federal Centers for Disease Control and Prevention, can cause symptoms that include nasal stuffiness, eye irritation, wheezing, skin irritation, fever, and shortness of breath. For people with chronic lung illnesses, mold infections can develop in their lungs, and exposure to mold can also bring on asthma attacks.

In response to consumer complaints about the mold problem, Bosch employees have recommended that consumers periodically run extra bleach and hot water cleaning cycles, and wipe-down the drum and bellows after each wash. These recommendations are not part of normal washing machine ownership. The need to spend money to remove the malodorous scent from the Machines and to pay for electricity and water needed to run hot water cycles to try and redress the effects of the Machines' defects is a damage each Machine owner has borne and one that will grow and increase with time.

Water accumulates in or adjacent to the door frame gasket/bellow of the Machines after every wash cycle. This post-wash moisture and water accumulation is the result of defects inherent in the Machines about which Ms. Wentworth, and others similarly situated, complain.

**Request for Material That Supports Bosch's Failure to Disclose that the Machines Grow and Accumulate Mold**

On behalf of our clients and absent class members, we ask that Bosch provide all information and data, including when said information and data came into Bosch's possession, which supports the conclusion that the Machines do not grow and accumulate mold. If Bosch fails to produce this information within thirty calendar days, it will be presumed that Bosch has no information that the Machines do not grow and accumulate mold, further demonstrating that Bosch concealed material information and misrepresented the Machines' uses, characteristics, benefits and did not intend to sell the Machines as advertised.

**Demand for Corrective Action & Response to This Demand**

On behalf of Ms. Wentworth, and all similarly situated Machine owners, we hereby demand that Bosch correct, repair or modify their Machines so that they do not cause Mold to grow within them and make clothes washed in them malodorous. An alternative to repair or modification is for Bosch to provide replacement Machines to Ms. Wentworth and all similarly situated consumers. Our clients are also open to consider accepting cash payments from Bosch so they can purchase replacement washing machines if Bosch will not offer to repair/modify them so that they will not grow and accumulate mold.

Replacement of Machine door frame gasket/bellows/boot with a new gasket/bellows/boot that is the same as the original gasket/bellows/boot will not be a repair or remedy of the defect that causes Mold to grow in Bosch front load gasket/bellows/boot. The replacement of a part that is the same that was used in the Machines' original manufacture will only assure future mold growth in the Machines. To repair the conditions that cause mold to grow in the Machines,

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Page 5

Bosch must provide a repair or modification of the Machines that keeps Mold from growing on and in the Machines. To date it has not done so. However, this office, on behalf of Ms. Wentworth and all similarly situated Machine purchasers, remains open to learning about Bosch's proposals of how to modify and truly repair the Machines so that mold will not grow within them. Please call me as soon as possible to discuss Bosch's proposals to address the matters described above.

Please, within 30 calendar days of your receipt of this letter, agree to repair and modify the Machines so that they indefinitely do not grow mold inside of them. If Bosch does not contact me to address the foregoing matter, our client, and through him, those similarly situated, will sue Bosch for, among other things, violation of the California Consumer Legal Remedies Act (California Civil Code § 1750 et. seq.).

**Demand Bosch Not Destroy Writings and Preserve the Writings Listed Below**

The last point of this letter is to demand that Bosch preserve and maintain all of the following "Writings"<sup>1</sup> pending its production to us in litigation or the resolution of this matter:

- a. Writings regarding the growth, presence and accumulation of mold, mildew, or similar bio-organic material in Bosch frontload washing machines sold in California (the "Machine(s)");
- b. Writings that are advertisements, brochures, pamphlets, sales and marketing material disseminated in or from California and that are regarding the Machines;
- c. Writings that were, or are with regard to communications to wholesalers or retailers in the chain or distribution of the Machines sold in California.
- d. Writings that Bosch intended to be disseminated to Machine purchasers and that are regarding the Machines;
- e. Writings that are complaints or are regarding complaints communicated from any source regarding the Machines;
- f. Writings that communicate all or some of the following: the names, addresses, phone numbers of Machine owners;
- g. Writings that communicate complaints regarding the performance of a Machine;

<sup>1</sup> The term or terms "WRITING" and "WRITINGS" as used herein means writings as defined in California Evidence Code § 250, and includes the original or a copy of handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them. "WRITINGS" also includes all electronic or magnetic files, or mediums that store information, including but not limited to electronic or computer stored files, email, CAD files, spreadsheets, databases, data used in a database, PowerPoint presentations, or other form of computer based visual presentations. "WRITINGS" that exist in electronic, magnetic or computer based formats include as part of those "WRITINGS" any associated metadata, including date and time stamps. Do not remove metadata from the "WRITINGS".

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Page 6

- 
- h. Writings from absent class members regarding breaches of Bosch's express warranty that applied to the Machines;
  - i. Writings that identify the names, addresses and phone numbers of entities which Bosch approved and authorized to service/repair the Machines;
  - j. Writings to Bosch approved service/repair providers regarding Mold in the Machines;
  - k. Writings regarding how many Machines Bosch manufactured and sold in the United States in the last ten years;
  - l. Writings that identify the names, addresses and phone numbers of Bosch authorized wholesalers and retailers of the Machines;
  - m. Writings that are or with regard to communications between Bosch and the Consumer Product Safety Commission;
  - n. Writings regarding the health hazard of Mold in the Machines;
  - o. Writings regarding health risks to household members that live in homes with frontload washers that have mold in them; and
  - p. Writings regarding safety issues relating to leaving the door open after each use.

I look forward to being contacted by Bosch and receipt of its proposal to remedy the Mold problem in the Machines.

Yours truly,

EPSTEINER & FLORICA ATTORNEYS, LLP

  
Stuart M. Epstein

SME/AJK/mmg

Enclosure: Service List of Addresses to Which Letter was sent via certified mail  
return receipt requested.

Exhibit 9, Page 6

|  |  |
|--|--|
| <b>TITLE OF MATTER</b><br><b>Bosch DLX Series Frontload Washing Machines</b>   |  |
| <b>ATTORNEY(S) NAME AND ADDRESS</b><br>TELEPHONE 858.350.1500<br>Stuart M. Eppsteiner, SBN 98973<br>Andrew P. Fiorica, SBN 200732<br>Eppsteiner & Fiorica Attorneys, LLP<br>12555 High Bluff Drive, Suite 155<br>San Diego, CA 92130 |  |
| <b>ATTORNEY(S) FOR:</b> Nancy Wentworth  |  |

**PROOF OF SERVICE**

C.C. P. 1010.5, 1010.6, 1010.2, 1013a (3)

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the county of San Diego, State of California. I am over the age of 18 and not a party to the matter; my business address is: Eppsteiner & Fiorica Attorneys, LLP, 12555 High Bluff Drive, Suite 155, San Diego, CA 92130.

On December 15, 2009, I served the following document(s) described as: **NOTICE OF VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT** on interested parties as follows:

|   |  |
|---|--|
| BSH Home Appliances Corporation<br>5551 McFadden Avenue<br>Huntington Beach, CA 92649           | Pacific Sales, Inc.<br>24120 Garnier Street<br>Torrance, CA 90505  |
| Michael Traub<br>5551 McFadden Avenue<br>Huntington Beach, CA 92649                             | Pacific Sales Kitchen and Bath Centers, Inc.<br>7601 Penn Avenue S.<br>Richfield, MN 55423                             |
| Best Buy Company Incorporated<br>Legal Department<br>7601 Penn Avenue S.<br>Richfield, MN 55423 | CT Corporation<br>Re: Pacific Sales Kitchen and Bath Centers, Inc.<br>818 West Seventh Street<br>Los Angeles, CA 90017 |

X (BY CERTIFIED MAIL, RETURN RECEIPT) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: December 15, 2009


  
LUPE SURO HORN

Exhibit 9, Page 7

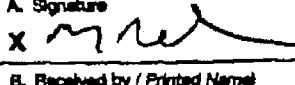
| SENDER: COMPLETE THIS SECTION   |  | COMPLETE THIS SECTION ON DELIVERY   |  |
|---|--|---|--|
| <p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> |  | <p>A. Signature<br/>X <i>[Signature]</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>   |  |
| <p>1. Article Addressed to:</p> <p><i>Pacific Sales Kitchen and Bath Centers, Inc.</i><br/><i>7601 Penn Ave S.</i><br/><i>Ridgfield, MN 55483</i></p>   |  | <p>B. Received by (Printed Name)<br/><i>Milo [Signature]</i></p> <p>C. Date of Delivery<br/><i>DEC 21 2009</i></p>  |  |
| <p>2. Article Number (or from service label)<br/><i>7000 1670 0009 79542746</i></p>   |  | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No<br/>If YES, enter delivery address below:</p>   |  |
| <p>PS Form 3811, February 2004 Domestic Return Receipt 102565-02-M-1549</p>   |  | <p>3. Service Type<br/> <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br/> <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise<br/> <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.         </p> |  |
|   |  | <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>   |  |

| SENDER: COMPLETE THIS SECTION   |  | COMPLETE THIS SECTION ON DELIVERY   |  |
|---|--|---|--|
| <p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> |  | <p>A. Signature<br/>X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>  |  |
| <p>1. Article Addressed to:</p> <p><i>CT Corporation</i><br/><i>At: Pacific Sales Kitchen and Bath Centers, Inc.</i><br/><i>818 West Seventh Street</i><br/><i>Los Angeles CA 90017</i></p>   |  | <p>B. Received by (Printed Name)<br/><i>[Signature]</i></p> <p>C. Date of Delivery<br/><i>DEC 1 2009</i></p>  |  |
| <p>2. Article Number (or from service label)<br/><i>7000 1670 0009 79542739</i></p>   |  | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No<br/>If YES, enter delivery address below:</p>   |  |
| <p>PS Form 3811, February 2004 Domestic Return Receipt 102565-02-M-1549</p>   |  | <p>3. Service Type<br/> <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br/> <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise<br/> <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.         </p> |  |
|   |  | <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>   |  |

| SENDER: COMPLETE THIS SECTION   |  | COMPLETE THIS SECTION ON DELIVERY  |  |
|---|--|--|--|
| <p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> |  | <p>A. Signature<br/><i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>   |  |
| <p>1. Article Addressed to:</p> <p><i>Bath Home Appliances Corp</i><br/><i>5351 McFadden Avenue</i><br/><i>Huntington Beach CA 92649</i></p>  |  | <p>B. Received by (Printed Name)<br/><i>[Signature]</i></p> <p>C. Date of Delivery<br/><i>12-15-09</i></p>   |  |
| <p>2. Article Number (or from service label)<br/><i>7000 1670 0002 7405 2000</i></p>  |  | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No<br/>If YES, enter delivery address below:</p>  |  |
| <p>PS Form 3811, February 2004 Domestic Return Receipt 102565-02-M-1549</p>   |  | <p>3. Service Type<br/> <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br/> <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise<br/> <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.         </p> |  |
|   |  | <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>  |  |

| SENDER: COMPLETE THIS SECTION  |  | COMPLETE THIS SECTION ON DELIVERY  |  |
|--|--|--|--|
| <ul style="list-style-type: none"><li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul> |  | <p>A. Signature  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>Michael Traub</u> C. Date of Delivery <u>12-15-09</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>If YES, enter delivery address below: <input type="checkbox"/> No</p> |  |
| 1. Article Addressed to:<br><br><u>Michael Traub</u><br><u>5551 McFadden Avenue</u><br><u>Huntington Beach CA 92649</u>  |  | 3. Service Type<br><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise<br><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.   |  |
| 2. Article Number<br>(or from service label) <u>7000 1670 0009 7954 2175</u>   |  | 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes   |  |

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

| SENDER: COMPLETE THIS SECTION  |  | COMPLETE THIS SECTION ON DELIVERY  |  |
|--|--|--|--|
| <ul style="list-style-type: none"><li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul> |  | <p>A. Signature  <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>Michael Traub</u> C. Date of Delivery <u>DEC 21 2009</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>If YES, enter delivery address below: <input type="checkbox"/> No</p> |  |
| 1. Article Addressed to:<br><br><u>Best Buy Company, Inc</u><br><u>Legal Department</u><br><u>7601 Penn Avenue S</u><br><u>Richfield, MN 55423</u>   |  | 3. Service Type<br><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise<br><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.   |  |
| 2. Article Number<br>(or from service label) <u>7000 1670 0009 7954 2722</u>   |  | 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes   |  |

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540



## EXHIBIT 10

## EPPSTEINER & FIORICA ATTORNEYS LLP

San Diego  
12555 High Bluff Drive  
Suite 155  
San Diego, California 92130  
Tel (858) 450-1500  
Fax (858) 450-1501

Smart M. Eppsteiner  
Andrew F. Fiorica  
Robert J. Prilish  
Brian K. Finley  
Andrew J. Kulok  
Also Admitted In Colorado

Colorado  
1426 Pearl Street  
Suite 202  
Boulder, Colorado 80302  
Tel (877) 480-1500  
Fax (858) 450-1501

www.eppsteiner.com

December 15, 2009

VIA CERTIFIED U.S. MAIL - RETURN RECEIPT REQUESTED

|   |   |
|---|---|
| BSH Home Appliances Corporation<br>5551 McFadden Avenue<br>Huntington Beach, CA 92649           | Pacific Sales, Inc.<br>24120 Garnier Street<br>Torrance, CA 90505   |
| Michael Traub<br>5551 McFadden Avenue<br>Huntington Beach, CA 92649                             | Pacific Sales Kitchen and Bath Centers, Inc.<br>7601 Penn Avenue S.<br>Richfield, MN 55423                                |
| Best Buy Company Incorporated<br>Legal Department<br>7601 Penn Avenue S.<br>Richfield, MN 55423 | CT Corporation<br>Re: Pacific Sales Kitchen and Bath Centers,<br>Inc.<br>818 West Seventh Street<br>Los Angeles, CA 90017 |

**Re: Notice of Violation of Express Warranty**

This letter shall serve to give BSH Home Appliances Corporation (hereafter "Bosch"), notice that all front load washing machines manufactured by Bosch, including, but not limited to, Bosch and Siemens brand front load washers, ("Machines") have component parts that are defective in materials and/or workmanship under normal home use. This notice is made by Nancy Wentworth on her behalf and on behalf of all California Machine owners.

Specifically, the Machines have component parts that are defective when used under normal home use in that they allow mold, mildew and similar bio-organic material ("Mold") to grow and accumulate inside of the Machines. This causes 1) the Machines to smell malodorous, 2) clothes washed in the Machines to smell malodorous, 3) the clothes washed in the Machines to be rendered worth less; 4) illness and injuries to people; and 5) Machine owners to run additional cycles with cleaning agents at additional and unexpected expense in an effort to ameliorate the malodorous scent in Machines and owners' clothes washed in the Machines.

Exhibit 0 Page 1

BSH Home Appliances Corporation  
December 15, 2009  
Page 2

Unless Bosch responds within 30 calendar days of the date of this letter with a plan to repair or replace parts that will stop the Machines from growing and accumulating Mold, Bosch will be in breach of its express warranty with respect to all California Machines for which the warranty period has not expired.

We understand that Bosch, Pacific Sales and Best Buy are each aware that the Bosch frontload washers are defective and have the inherent problem of growing and accumulating mold. Your companies must realize that consumers buy washers to clean their clothes. Machines that cause consumers' clothes to smell foul, moldy and pose health hazards are defective and do not satisfy the Machines' most basic purpose. If Bosch has a solution for this inherent defect we welcome it to contact us to open a dialogue regarding a remedy for all Machine owners. Periodic replacement of boots/bellows/gaskets when they reach extreme levels of mold build-up is not curing the defect in the Machines.

Yours truly,

EPSTEIN & FIORICA ATTORNEYS, LLP

Stuart M. Epstein

SME/AJK/mmg

Exhibit 10 Page 2

67177

141

|  |  |
|--|--|
| <b>TITLE OF MATTER</b><br><b>Bosch DLX Series Frontload Washing Machines</b>   |  |
| <b>ATTORNEY(S) NAME AND ADDRESS</b><br>TELEPHONE 858-350-1500<br>Stuart M. Eppsteiner, SBN 98973<br>Andrew P. Fiorica, SBN 200732<br>Eppsteiner & Fiorica Attorneys, LLP<br>12555 High Bluff Drive, Suite 155<br>San Diego, CA 92130 |  |
| <b>ATTORNEY(S) FOR:</b> Nancy Wentworth  |  |

**PROOF OF SERVICE**

C.C. P. 1010.5, 1010.6, 1010.2, 1013a (3)

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the county of San Diego, State of California. I am over the age of 18 and not a party to the matter; a business address is: Eppsteiner & Fiorica Attorneys, LLP, 12555 High Bluff Drive, Suite 155, San Diego, CA 92130.

On December 15, 2009, I served the following document(s) described as: **NOTICE OF VIOLATION OF EXPRESS WARRANTY** on interested parties as follows:

|   |  |
|---|--|
| BSH Home Appliances Corporation<br>5551 McFadden Avenue<br>Huntington Beach, CA 92649           | Pacific Sales, Inc.<br>24120 Garnier Street<br>Torrance, CA 90505  |
| Michael Traub<br>5551 McFadden Avenue<br>Huntington Beach, CA 92649                             | Pacific Sales Kitchen and Bath Centers, Inc.<br>7601 Penn Avenue S.<br>Richfield, MN 55423                             |
| Best Buy Company Incorporated<br>Legal Department<br>7601 Penn Avenue S.<br>Richfield, MN 55423 | CT Corporation<br>Re: Pacific Sales Kitchen and Bath Centers, Inc.<br>818 West Seventh Street<br>Los Angeles, CA 90017 |

X (BY CERTIFIED MAIL, RETURN RECEIPT) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

X (State) I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

Dated: December 15, 2009

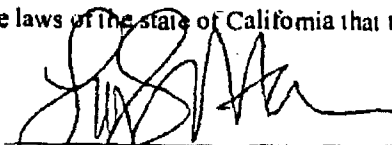
  
\_\_\_\_\_  
LUPE SURO HORN

Exhibit 10 Page 3

| SENDER: COMPLETE THIS SECTION   |  | COMPLETE THIS SECTION ON DELIVERY   |  |
|---|--|---|--|
| <p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> |  | <p>A. Signature<br/>X <i>[Signature]</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>   |  |
| <p>1. Article Addressed to:</p> <p><i>Pacific Sales Kitchen and Bath Centers, Inc.</i><br/><i>7601 Penn Ave S.</i><br/><i>Ridgfield, MN 55423</i></p>   |  | <p>B. Received by (Printed Name)<br/><i>Milica [Signature]</i></p> <p>C. Date of Delivery<br/><i>DEC 21 2009</i></p>  |  |
| <p>2. Article Number<br/>(or from service label) <i>7000 1670 0009 7954 2746</i></p>  |  | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No<br/>If YES, enter delivery address below:</p>   |  |
| PS Form 3811, February 2004   |  | Domestic Return Receipt 102295-02-10-1540   |  |
|   |  | <p>3. Service Type<br/> <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br/> <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise<br/> <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.                 </p> |  |
|   |  | <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>   |  |

| SENDER: COMPLETE THIS SECTION   |  | COMPLETE THIS SECTION ON DELIVERY  |  |
|---|--|--|--|
| <p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> |  | <p>A. Signature<br/>X <i>Raula Rivera</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>  |  |
| <p>1. Article Addressed to:</p> <p><i>CT Corporation</i><br/><i>18: Pacific Sales Kitchen and Bath Centers, Inc.</i><br/><i>818 West Seventh Street</i><br/><i>Los Angeles CA 90017</i></p>   |  | <p>B. Received by (Printed Name)<br/><i>[Signature]</i></p> <p>C. Date of Delivery<br/><i>DEC 1 2009</i></p>   |  |
| <p>2. Article Number<br/>(or from service label) <i>7000 1670 0009 7954 2739</i></p>  |  | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No<br/>If YES, enter delivery address below:</p>  |  |
| PS Form 3811, February 2004   |  | Domestic Return Receipt 102295-02-10-1540  |  |
|   |  | <p>3. Service Type<br/> <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br/> <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise<br/> <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.                 </p> |  |
|   |  | <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>  |  |

| SENDER: COMPLETE THIS SECTION   |  | COMPLETE THIS SECTION ON DELIVERY  |  |
|---|--|--|--|
| <p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> |  | <p>A. Signature<br/>X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>   |  |
| <p>1. Article Addressed to:</p> <p><i>Bath Home Appliances Corp</i><br/><i>3351 McFadden Avenue</i><br/><i>Huntington Beach CA 92649</i></p>  |  | <p>B. Received by (Printed Name)<br/><i>[Signature]</i></p> <p>C. Date of Delivery<br/><i>12-15-09</i></p>   |  |
| <p>2. Article Number<br/>(or from service label) <i>7000 1670 0009 7954 2890</i></p>  |  | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No<br/>If YES, enter delivery address below:</p>  |  |
| PS Form 3811, February 2004   |  | Domestic Return Receipt 102295-02-10-1540  |  |
|   |  | <p>3. Service Type<br/> <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br/> <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise<br/> <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.                 </p> |  |
|   |  | <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>  |  |

| SENDER: COMPLETE THIS SECTION  |  | COMPLETE THIS SECTION ON DELIVERY  |  |
|--|--|--|--|
| <ul style="list-style-type: none"><li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul> |  | <p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery <i>12-15-09</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>If YES, enter delivery address below: <input type="checkbox"/> No</p> |  |
| 1. Article Addressed to:<br><br><i>Michael Traub<br/>5551 McFadden Avenue<br/>Huntington Beach CA 92649</i>  |  | 3. Service Type<br><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise<br><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.   |  |
| 2. Article Number<br>(or from service label) <i>7000 1670 0009 7954 2175</i>   |  | 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes   |  |

PS Form 3811, February 2004 Domestic Return Receipt 102508-02-M-1640

| SENDER: COMPLETE THIS SECTION  |  | COMPLETE THIS SECTION ON DELIVERY  |  |
|--|--|--|--|
| <ul style="list-style-type: none"><li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul> |  | <p>A. Signature <i>[Signature]</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery <i>DEC 21 2009</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>If YES, enter delivery address below: <input type="checkbox"/> No</p> |  |
| 1. Article Addressed to:<br><br><i>Best Buy Company, Inc<br/>Legal Department<br/>7601 Penn Avenue S<br/>Richfield, MN 55423</i>   |  | 3. Service Type<br><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise<br><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.   |  |
| 2. Article Number<br>(or from service label) <i>7000 1670 0009 7954 2722</i>   |  | 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes   |  |

PS Form 3811, February 2004 Domestic Return Receipt 102508-02-M-1640



| SENDER: COMPLETE THIS SECTION  |  | COMPLETE THIS SECTION ON DELIVERY  |  |
|--|--|--|--|
| <ul style="list-style-type: none"><li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul> |  | <p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery <i>12-15-09</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No<br/>If YES, enter delivery address below:</p> |  |
| 1. Article Addressed to:<br><i>Michael Traub<br/>5551 McFadden Avenue<br/>Huntington Beach CA 92649</i>  |  | 3. Service Type<br><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise<br><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.   |  |
| 2. Article Number<br>(or from service label) <i>7000 1670 0009 7954 2175</i>   |  | 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes   |  |

PS Form 3811, February 2004 Domestic Return Receipt 102508-02-00-1540

| SENDER: COMPLETE THIS SECTION  |  | COMPLETE THIS SECTION ON DELIVERY   |  |
|--|--|---|--|
| <ul style="list-style-type: none"><li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul> |  | <p>A. Signature <i>[Signature]</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery <i>DEC 2 2009</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No<br/>If YES, enter delivery address below:</p> |  |
| 1. Article Addressed to:<br><i>Best Buy Company, Inc<br/>Legal Department<br/>7601 Penn Avenue S<br/>Richfield, MN 55423</i>   |  | 3. Service Type<br><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise<br><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.  |  |
| 2. Article Number<br>(or from service label) <i>7000 1670 0009 7954 2722</i>   |  | 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes  |  |

PS Form 3811, February 2004 Domestic Return Receipt 102508-02-00-1540

**PROOF OF SERVICE**

**C.C. P. 1010.5, 1010.6, 1010.2, 1013a (3)**

**STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**

I am employed in the county of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is: Eppsteiner & Fiorica Attorneys, LLP, 12555 High Bluff Drive, Suite 155, San Diego, CA 92130.

On **September 11, 2013**, I served the following document(s) described as:

**REDACTED - THIRD AMENDED CONSOLIDATED COMPLAINT**

On interested parties, on the interested parties, as follows:

**SEE ATTACHED SERVICE LIST**

x **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

       **(BY OVERNIGHT MESSENGER SERVICE)** I caused said document(s) to be deposited in the receptacle for overnight services and requested that it be delivered to the above-named parties/attorneys by way of priority next day delivery according to the clearly posted guidelines of said overnight carrier.

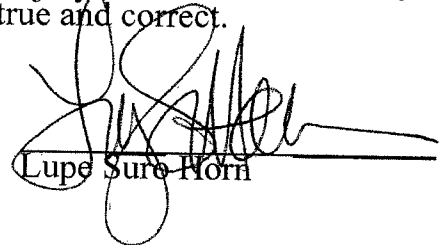
       **BY EMAIL (E-Service)** I caused said document(s) to be transmitted electronically to the interested parties at the email addresses(es) as stated on the attached service.

       **BY FACSIMILE** I caused said document(s) to be transmitted via facsimile to the interested parties at the listed facsimile number(s).

       **(BY ECF) (E-Service)** I caused said document(s) to be transmitted electronically to the interested parties pursuant to the ECF Service List.

X **(Federal)** I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Dated: September 11, 2013

  
Lupe Suro Horn

**Cobb, et al. v. BSH Home Appliances, et al.**  
**USDC Case No. SAC10-711 DOC (ANx)**

**SERVICE LIST**

|  |  |
|--|--|
| <p>James Hansen, Esq.<br/>Thomas M. Rutherford, Jr., Esq.<br/>WILLIS DEPASQUALE, LLP<br/>725 West Town &amp; Country Road, Suite 550<br/>Orange, California 92868<br/>Tel: (714) 544-6000<br/>Fax: (714) 544-6202<br/>Email: <a href="mailto:jhansen@wdlegal.net">jhansen@wdlegal.net</a></p>                | <p>Elwood Lui, Esq.<br/>Frederick L. McNight, Esq.<br/>Erik K. Swanholt, Esq.<br/>Jones Day<br/>555 S. Flower Street, 50<sup>th</sup> Floor<br/>Los Angeles, CA 90071-2300<br/>Tel: (213) 489-3939<br/>Fax: (213) 243-2539<br/>Email: <a href="mailto:elui@jonesday.com">elui@jonesday.com</a><br/>Email: <a href="mailto:fmcnight@jonesday.com">fmcnight@jonesday.com</a><br/>Email: <a href="mailto:ekswanholt@jonesday.com">ekswanholt@jonesday.com</a></p> |
| <p>Elmer Robert Keach, III, Esq.<br/>Law Office of Elmer Robert Keach, III, PC<br/>1040 Riverfront Center<br/>Post Office Box 70<br/>Amsterdam, New York 12010<br/>Tel: (518) 434-1718<br/>Fax: (518) 770-1558<br/>Email: <a href="mailto:bobkeach@keachlawfirm.com">bobkeach@keachlawfirm.com</a></p>       | <p>Richard J. Burke, Esq.<br/>Julie D. Miller, Esq.<br/>Complex Litigation Group LLC<br/>513 Central Avenue, Suite 300<br/>Highland Park, IL 60035<br/>Tel: (847) 433-4500<br/>Fax: (847) 433-2500<br/>Email: <a href="mailto:rich@complexlitgroup.com">rich@complexlitgroup.com</a><br/>Email: <a href="mailto:julie@complexlitgroup.com">julie@complexlitgroup.com</a></p>   |
| <p>Leigh Parker, Esq.<br/>WeissLaw, LLP<br/>1516 S. Bundy Drive #309<br/>Los Angeles, CA 90025<br/>Tel: (310) 208-2800<br/>Fax: (310) 209-2348<br/>Email: <a href="mailto:jlurie@weisslurie.com">jlurie@weisslurie.com</a><br/>Email: <a href="mailto:zzysman@weisslurie.com">zzysman@weisslurie.com</a></p> | <p>Daniel C. Levin, Esq.<br/>Levin, Fishbein, Sedran &amp; Berman<br/>510 Walnut Street, Suite 500<br/>Philadelphia, PA 19106<br/>Tel: (215) 592-1500<br/>Fax: (215) 592-4663<br/>Email: <a href="mailto:dlevin@lfsblaw.com">dlevin@lfsblaw.com</a></p>  |